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In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, PETITIONER

v.

MABEL DUNCAN, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Reasons for granting the petition	11
Conclusion	17

CITATIONS

Cases:

Cherry v. *United States*, 594 F.2d 795	13, 14, 17
Eastport S.S. Corp. v. *United States*, 372 F.2d 1002	13
Finn v. *United States*, 123 U.S. 227	15
Mitchell v. *United States*, 591 F.2d 1300, cert. granted, No. 78-1756 (June 8, 1979)	9, 11, 15, 17
Munro v. *United States*, 303 U.S. 36	15
United States v. *Shaw*, 309 U.S. 495	15
United States v. *Testan*, 424 U.S. 392	11, 13
United States v. *United States Fidelity & Guaranty Co.*, 309 U.S. 506	15

Statutes:

Act of August 18, 1958 (Rancheria Act), Pub. L. No. 85-671, 72 Stat. 619 *et seq.*:	
Section 2, 72 Stat. 619	4
Section 3, 72 Stat. 619-620	2, 3, 4
Section 3(c), 72 Stat. 620	5, 10
Section 9, 72 Stat. 621	10, 14
Section 11, 72 Stat. 621	5

Statutes—Continued	Page
Act of July 31, 1959, Pub. L. No. 86-121, Section 7, 73 Stat. 267, 42 U.S.C. 2004a (a)	6
Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390	3, 4
Appropriation Act of April 30, 1908, Pub. L. No. 60-104, 35 Stat. 70	4
General Allotment Act of 1887, ch. 119, 24 Stat. 388, 25 U.S.C. 331-388	9, 14
Indian Department Appropriation Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325	4
28 U.S.C. 1406(c)	7, 10
28 U.S.C. 1491	2
28 U.S.C. 2501	8
Miscellaneous:	
103 Cong. Rec. 15205-15207 (1957)	14
104 Cong. Rec. 15232 (1958)	14
30 Fed. Reg. 11330 (1965)	7
H.R. Rep. No. 85-1129, 85th Cong., 1st Sess. (1957)	14
S. Rep. No. 85-1874, 85th Cong., 2d Sess. (1958)	14
S. Rep. No. 88-1263, 88th Cong., 2d Sess. (1964)	14

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The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Claims in this case.

OPINION BELOW

The opinion of the Court of Claims (App. A, *infra*, 1a-25a) is reported at 597 F.2d 1337.

JURISDICTION

The decision of the Court of Claims was filed on April 18, 1979. On July 6, 1979, the Chief Justice extended the time for filing a petition for a writ of

certiorari to and including August 31, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether the United States has consented to be sued for money damages in respect of injuries allegedly suffered by members of an Indian Tribe because their rancheria was terminated without compliance with statutory procedures, conduct asserted to constitute a breach of trust.

2. Whether, if the United States is held answerable in money damages for such conduct, damages may be awarded for alleged injuries not proximately caused by the statutory violation and breach of trust alleged.

STATUTES INVOLVED

1. 28 U.S.C. 1491 provides in relevant part:

> The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. * * *

2.*a.* Section 3 of the Act of August 18, 1958, Pub. L. No. 85-671, 72 Stat. 619-620, as originally enacted, provided in pertinent part:

> Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:
>
> * * * * *
>
> (c) [T]o install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

b. Section 3 of the Act of August 18, 1958, 72 Stat. 619-620, Pub. L. No. 85-671, as amended by the Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390, provides in relevant part:

> Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:
>
> * * * * *
>
> (c) To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures) and irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United States: * * *.

STATEMENT

1. Respondents are individual East Lake Band Pomo Indians of the Robinson Rancheria seeking to recover damages for injuries allegedly suffered as a result of the termination of the reservation status of the Rancheria and their own special legal status

as Indians. Respondents contend that the reservation status of the Rancheria was terminated without compliance with the requirements of Section 3 of the Act of August 18, 1958, Pub. L. No. 85-671, 72 Stat. 619-620, as amended by the Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390 (the "Rancheria Act").

The Robinson Rancheria is one of the small Indian reservation communities established by the Secretary of the Interior in California in the early years of this century. The Rancheria property was purchased by the United States in 1909 under the authority of the Indian Department Appropriation Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325, 333, and the Appropriation Act of April 30, 1908, Pub. L. No. 60-104, 35 Stat. 70, 76. The deed of transfer to the United States did not mention the purpose of the acquisition, or subject the lands to a trust, but the lands were assigned by the Secretary to the East Lake Band of Pomos for their use. In addition to the Robinson Rancheria proper, the East Lake Band of Pomos obtained an interest in a nearby tract known universally as "the Woodlot," which was set aside by the Secretary out of the public domain in 1907.

In 1958, Congress enacted the Rancheria Act for the purpose of terminating the reservation status of the rancherias and the Indian status of their residents. Under Section 2 of the Act, 72 Stat. 619, the lands and assets of 41 California rancherias and reservations, including the Robinson Rancheria, were

to be distributed in unrestricted fee to the Indians residing thereon, pursuant to a plan to be agreed upon by the Secretary and the distributees. After distribution, the lands were to become subject to all state and federal taxes, and the distributees and their dependents were to lose their legal status as Indians. *Ibid.* In addition, any tribal constitution or charter formerly approved by the Secretary was to be revoked. Section 11 of the Act, 72 Stat. 621.

Before the rancheria property was conveyed to the distributees under the Act, the Secretary was required to complete certain tasks. These included the responsibility

> to install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

Section 3(c) of the Act, 72 Stat. 620.

A distribution plan for the Robinson Rancheria was developed by the Secretary and, on February 25, 1960, received the necessary approval of the 28 individual distributees. The only "agreement" relating to water supply made by the Secretary with the East Lake Pomos was a statement in the approved distribution plan that:[1]

> The Indians of Robinson Rancheria request that the Bureau of Indian Affairs undertake the fol-

[1] The record does not indicate whether any new homes attained 50% completion during this period, nor is there anything to suggest that the Secretary failed in any way to comply with this arrangement.

> lowing actions: * * *(2) Provide water for any residence under construction that is as much as fifty percent completed within a ninety-day period after acceptance of this plan by a majority of the adult Indian distributees * * *.

Deeds to the distributees were recorded and delivered in 1961.[2] Thereafter, the lands conveyed to the distributees became subject to the local real property tax.

Before public notice was made terminating the reservation status of the Rancheria, the Rancheria Act was amended by the Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390.[3] Section 3(c) of the Act, as amended, included sewage facilities within the class of improvements the Secretary was authorized to provide prior to termination. As with the 1958 Act, however, the amended Section 3(c) did not mandate that any particular services be provided. Instead, the Act authorized the provision of those services agreed upon by the Secretary and the distributees of the rancheria.

The Secretary and respondents made no further agreements regarding water or sewer services after enactment of the 1964 amendments to the Rancheria

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[2] A nonprofit Robinson Pomo Association was created to take title to certain communal assets of the East Lake Band, including the Woodlot. Title thereto was conveyed in 1963.

[3] The proclamation terminating the reservation status of the Rancheria was delayed to preserve the eligibility of the distributees for the construction of sewage facilities under the Act of July 31, 1959, Pub. L. No. 86-121, 73 Stat. 267, 42 U.S.C. 2004a(a) (authorizing Surgeon General to construct sewage facilities on Indian lands).

Act. A termination proclamation for the Robinson Rancheria and the distributees was published on September 3, 1965. 30 Fed. Reg. 11330.

2. On August 19, 1971, respondents filed an action in federal district court seeking declaratory and injunctive relief against the Secretary of the Interior, contending that the termination of the Robinson Rancheria had been carried out in violation of the terms of the Rancheria Act and was therefore void. *Duncan* v. *Andrus*, Nos. C-71-1572 WWS, C-71-1713 WWS (N.D. Cal.). Respondents also sought money damages for the allegedly wrongful termination. The damage claims were amended in late 1974 to demand an amount in excess of $10,000, and the district court granted respondents' motion to transfer the damage claims to the Court of Claims pursuant to 28 U.S.C. 1406(c).

By agreement of the parties, litigation in the Court of Claims was held in abeyance while the proceedings in the district court were concluded. The district court found that, as of the date of termination, the Rancheria water supply was inadequate in quantity for irrigation of home gardens and was unsatisfactory in quality for domestic use. The court also found that the inadequate water supply had created problems in sewage disposal. The court held that, because adequate water facilities had not been provided, the termination was unauthorized under the Rancheria Act (App. B, *infra*, 34a-39a).[4] The

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[4] In the district court, respondents argued that the Rancheria Act imposed an absolute duty upon the Secretary to

court ordered that the notice of termination of the Robinson Rancheria be rescinded, that all federal Indian benefits be restored to the distributees, and that each distributee who still held title to the property from the United States be allowed to reconvey the property to the United States to be held for his use (App. B, *infra*, 39a-40a).[5] No appeal was taken from the judgment of the district court.

3. Respondents then pursued their claims for damages in the Court of Claims. They sought partial summary judgment on liability, claiming that the termination constituted a breach of trust for which the government was required to respond in damages. Alternatively, respondents claimed that the distribution agreement was a contract that the government had breached. The government moved to dismiss respondents' claims for want of jurisdiction, arguing that there was no statutory consent to suit, and that the claims were barred by the six-year statute of limitations in 28 U.S.C. 2501.

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provide an adequate water supply to the distributees before conveying the land to them, and that the Robinson Rancheria termination was therefore unauthorized and voidable. The government acquiesced in this interpretation of the Rancheria Act and acknowledged that it had some fiduciary duty to the East Lake Pomos, at least until the date of the termination. The government further agreed that the termination should be set aside.

[5] The titles of third-party purchasers of distributed lands were not affected by the judgment of the district court. The court suggested that distributees who had sold such property might pursue a damage remedy in the Court of Claims (App. B, *infra*, 40a).

The Court of Claims granted the claimants' motion for summary judgment and denied the government's motion to dismiss. The court held that the findings of the district court in *Duncan* v. *Andrus* were binding on the question whether the requirements of the Rancheria Act had been complied with prior to termination (App. A, *infra*, 13a-14a). The court concluded that the government had consented to suits in money damages for violation of the Rancheria Act because, whenever a trust relationship is established by statute, the statute "fairly mandate[s] compensation" for its breach and thus authorizes suit in the Court of Claims (App. A, *infra*, 7a-8a). In so holding, the Court of Claims relied on its decision in *Mitchell* v. *United States*, 591 F.2d 1300 (1979), cert. granted, No. 78-1756 (June 18, 1979), holding the United States liable in money damage for "breach of trust" in the management of lands allotted to individual Indians under the General Allotment Act, 25 U.S.C. 331 *et seq.*

In determining that a trust relationship existed between the United States and the East Lake Pomos of the Robinson Rancheria, the court emphasized that the trust need not be established expressly by the statute under which the suit is brought (App. A, *infra*, 10a). The court relied in this case on the language and history of the 1906 and 1908 appropriations acts that indicated that the Rancherias were intended to be used by the California Indians in the manner of a reservation. The court also cited portions of the Agreed Statement of Facts submitted to

the district court in *Duncan* v. *Andrus* which indicated the Secretary's belief that a trust relationship had existed prior to termination. Finally, the court observed that Section 9 of the Rancheria Act makes reference to the "termination of the Federal trust," 72 Stat. 621, and thus indicates that a trust had in fact existed prior to termination (App. A, *infra*, 10a-12a).[6]

The court concluded that the trust duty inferred from these divers sources had been breached by the government (App. A, *infra*, 13a-15a). The court held that the statute absolutely required the Secretary to provide an adequate water supply, and that the Secretary had breached his fiduciary duty in failing to do so.[7]

In granting the motion for summary judgment, the Court of Claims, acting *sua sponte*, also ruled on some of the particular damage claims, and offered guidance for the handling of others upon remand

[6] The court rejected the government's contention that the claims were time-barred because filed more than ten years after termination of the Rancheria. The court concluded that the claims were timely filed in the district court and noted that the transfer statute (28 U.S.C. 1406(c)) provides that a transferred case is to proceed "as if it had been filed in the Court of Claims on the date it was filed in the district court" (App. A, *infra*, 24a-25a). We do not seek review of this aspect of the Court of Claims' decision.

[7] The government did not dispute that services authorized by Section 3(c) of the Rancheria Act had not been provided. Instead, the government argued that the statute afforded the Secretary discretion in providing services and that his actions were a reasonable exercise of that discretion and not a breach of trust.

(App. A, *infra*, 15a-24a). The court held that Congress had not consented to suit for all kinds of damages that might arguably be traced to a breach of trust, and that damages recoverable for breach of trust are limited to "tangible, direct inquiries to property or to direct losses due to denials of required services" (App. A, *infra*, 17a). The court therefore stated that respondents' claimed damages for emotional and cultural harm could not be recovered on the theory of breach of trust (App. A, *infra*, 21a). On the other hand, the court concluded that respondents were entitled to recover as damages all amounts paid in local property taxes during the period of improper termination, and the value of all land forfeited in tax sales (App. A, *infra*, 20a-21a). Furthermore, respondents are to receive the value of all Indian services, including water and sanitary facilities, withheld during termination and are also to receive damages for the government's failure to provide a right-of-way to the Woodlot (App. A, *infra*, 23a). The amount of those damages was left for determination after trial upon remand.

REASONS FOR GRANTING THE PETITION

The present decision of the Court of Claims rests squarely upon its earlier ruling in *Mitchell* v. *United States*, 591 F.2d 1300 (1979), which is now before this Court on certiorari, No. 78-1756 (June 18, 1979). Here, as in *Mitchell*, the Court of Claims has disregarded this Court's ruling in *United States* v. *Testan*, 424 U.S. 392 (1976), and its decision threatens to significantly expand the government's liability

in an area where consent to suit has not been given. Accordingly, for the reasons elaborated in our petition in *Mitchell*,[8] we submit the present case equally merits the Court's review.

The errors committed in *Mitchell* are repeated here. But that is not all. In the decision below, the Court of Claims considerably extends the rule announced in *Mitchell*. As in *Mitchell*, the Court concluded that the United States had consented to be sued in damages despite the absence of any express declaration by Congress. Unlike *Mitchell*, however, the present decision does not even purport to rest on the breach of a fiduciary duty established by Congress. Instead, the Court held that an administrative interpretation of the special relationship between the United States and Indian tribes generally, unrelated to issues of consent to suit or monetary entitlement, was sufficient to establish a legally binding trust relationship and to effectuate a waiver of sovereign immunity with respect to an action for damages for breach of that trust.

Finally, in determining the categories of loss or damage that will be recoverable, the Court of Claims disregarded ordinary principles of proximate causation which limit monetary liability. These rulings, objectionable in any event, compound the basic error of permitting recovery for an alleged breach of trust in the absence of a congressional mandate.

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[8] We are serving copies of our *Mitchell* petition and brief on respondents in the present case.

1. The holding that the existence of a trust relationship is sufficient to establish the United States' consent to be sued is contrary to fundamental principles of sovereign immunity as reiterated by the Court in *United States* v. *Testan, supra*. The court below did not purport to locate any statute which contains the necessary unequivocal consent to suit. *United States* v. *Testan, supra*, 424 U.S. at 399. Nothing in the Rancheria Act or the statutes authorizing purchase of the Robinson Rancheria remotely approaches the standard stated in *Testan*, that the statute " 'in itself * * * can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.' " *Id.* at 402, quoting *Eastport S.S. Corp.* v. *United States*, 372 F.2d 1002, 1008-1009 (Ct. Cl. 1967). For the reasons stated in our petition (pages 7-10) and opening brief (pages 11-21) in *Mitchell*, No. 78-1756, this holding was erroneous. Indeed *Duncan* goes beyond *Mitchell* in this respect by squarely holding that *any* statutorily established or recognized trust relationship represents a waiver of sovereign immunity for suits for money damages for breach of trust.

2. The decision below substantially extends *Mitchell* by inferring consent to suit from a fiduciary relationship found to exist independent of any particular statutory source.[9] Unlike the General Allotment Act

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[9] The Court of Claims relied upon its recent decision in *Cherry* v. *United States*, 594 F.2d 795 (1979), as authority for the proposition that trust language need not be used to create a trust relationship (App. A, *infra*, 10a). *Cherry* in turn rests upon *Mitchell, supra*, 594 F.2d at 799, although

of 1887, ch. 119, 24 Stat. 388, 25 U.S.C. 331-348, involved in *Mitchell*, neither the 1906 nor 1908 Appropriation Acts—which authorized establishment of the Robinson Rancheria—refer in any way to a trust. The court below erred in relying upon a district court's finding and the Secretary's acknowledgement that some fiduciary relationship existed between the United States and the East Lake Pomo Indians, for both were made without regard to the question of consent to suit. Section 9 of the Rancheria Act of 1958, referring to termination of a trust relationship, demonstrates at most that the relationship between the government and the East Lake Pomos was no different from that which exists between the United States and all federally recognized Indian tribes.[10] Unlike *Mitchell*, in which the Court of Claims eschewed reliance upon "unanchored judge-created principles of fiduciary law," 591 F.2d at 1302, the present decision necessarily rests at bottom upon the conclusion that the special relationship between the United States and Indian tribes generally establishes a waiver of the government's immunity to

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it represents a considerable extension thereof, and drew a dissenting opinion on this point in the Court of Claims. 594 F.2d at 802 (Bennett, J.).

[10] There is no indication in the legislative history of the 1958 Rancheria Act or the 1964 amendments thereto that Congress intended to recognize a trust relationship carrying with it consent to suit. See H.R. Rep. No. 85-1129, 85th Cong., 1st Sess. (1957); S. Rep. No. 85-1874, 85th Cong., 2d Sess. (1958); 103 Cong. Rec. 15205-15207 (1957); 104 Cong. Rec. 15232 (1958); S. Rep. No. 88-1263, 88th Cong., 2d Sess. (1964); 110 Cong. Rec. 8378, 17539 (1964).

suit as to any and all disputes that might arise out of this relationship.

This is contrary to the settled principle that only Congress, and neither the courts nor any executive officer of the United States, may waive the immunity of the United States from suit. *United States* v. *United States Fidelity & Guaranty Co.*, 309 U.S. 506, 513 (1940); *United States* v. *Shaw*, 309 U.S. 495, 500 (1940); *Munro* v. *United States*, 303 U.S. 36, 41 (1938); *Finn* v. *United States*, 123 U.S. 227, 232 (1887). The "unanchored judge-created principles of fiduciary law," *Mitchell*, *supra*, 591 F.2d at 1302, upon which the finding of consent to suit rests cannot constitute the "affirmative statutory authority" required to establish consent to suit. *United States* v. *United States Fidelity & Guaranty Co.*, *supra*, 309 U.S. at 514.

3. In reaching out to decide damage issues not placed before it by the parties, the court below disregarded ordinary principles of proximate causation, which limit the recovery of damages. The only breach of fiduciary duty identified by the district court in *Duncan* v. *Andrus* (App. B, *infra*, 35a-39a), was the failure to provide adequate water facilities. On this record, assuming the availability of damages *vel non*, the award should be limited to such a sum as will restore respondents to the position they would have enjoyed had there been no violation of the statute. Such damages are limited to the non-provision of water facilities, and any injury due to premature termination of the rancheria insofar as that can be attributed to the failure to provide an adequate water

supply. Yet the Court went well beyond allowing those claims.

For instance, the decision below permits recovery of damages sought for injuries suffered through the government's failure to preserve access to the Woodlot for distributees, a matter in no way causally linked to the failure to provide water and sewer services.[11] The Court also awarded damages, subject only to proof of amount, for subjection of distributees' property to local property taxes, loss of lands through tax sales, and withholding of Indian services. Again, these injuries are wholly unrelated to the only statutory violation found. No showing has been made that termination would not have occurred had adequate water and sewer service been provided; nor does it seem plausible that such proof could be provided, even if the court below had not foreclosed the issue by its *sua sponte* consideration of damages.[12]

4. The decision of the Court of Claims continues the unprecedented expansion of the government's liability heralded by *Mitchell*, *supra*. The grave financial and administrative implications of this course for the government, already noted in our petition in No. 78-1756, are underscored by the present decision.

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[11] We note, too, that respondents have never demonstrated, the government has never admitted, and no court has ever found, that any duty to preserve such access existed under the Rancheria Act, or otherwise.

[12] The preliminary rulings on damages for subjection to California building codes and physical injuries also fail to conform to the rules of proximate causation in the proof of damages (App. A, *infra*, 23a).

Nor is this trend in the recent jurisprudence of the Court of Claims limited to the area of Indian claims. See, *e.g.*, *Cherry* v. *United States*, 594 F.2d 795 (1979). The question presented here is of continuing importance.

As we have said, the issues tendered here are intimately related to those in *Mitchell*, No. 78-1756. Yet, this case, arising in a different factual and legal setting, has yielded a ruling of potentially more general applicability. In the circumstances, the Court may deem it appropriate to grant the present petition and set the case to be argued in tandem with *United States* v. *Mitchell*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 1979

APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

No. 10-75

(Decided April 18, 1979)

MABEL DUNCAN, ET AL.

v.

THE UNITED STATES

Before DAVIS, KASHIWA, and KUNZIG, *Judges.*

ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT'S MOTION TO DISMISS

DAVIS, *Judge*, delivered the opinion of the court:

Plaintiffs, Pomo Indians of the Robinson Rancheria in Northern California, have attacked the termination by the United States of their rancheria status in 1965. In the companion district court case against the Secretary of the Interior (and other federal officials), *Duncan* v. *Andrus*, Nos. C-71-1572 and C-71-1713 (N.D. Cal. March 22, 1977), they obtained declaratory and injunctive relief grounded on that court's determination that the termination was unlawful. In the present suit (initially part of the Dis-

trict Court litigation but transferred here under 28 U.S.C. § 1406 (c)), claimants seek monetary recovery for damages resulting from the invalid termination. They have moved for partial summary judgment on liability, urging that the 1965 termination was a breach of trust and rendered the federal Government responsible for various pecuniary damages.[1] Defendant has cross-moved to dismiss for lack of jurisdiction and because plaintiffs' claims are allegedly barred by the statute of limitations.

We find no jurisdictional or limitation bar to this suit and conclude that plaintiffs are entitled to partial summary judgment on the issue of liability. We hold, too, that certain of plaintiffs' monetary claims are plainly recoverable if proved; that some other types of damages are clearly not recoverable; and that still other kinds may or may not be recoverable, depending mainly on the factual nature and proof of these damage claims.

I.

Background

The facts on which we base this decision are presented in plaintiffs' uncontested affidavit and in the exhibits accompanying their motion for partial summary judgment. The primary exhibit is a detailed "Agreed Statement of Facts," filed by both sides

[1] Plaintiffs also premise liability on a breach of contract theory, arguing that the termination agreement itself constituted a contract which the United States breached. Because we find defendant liable for breach of trust, we do not reach plaintiffs' alternative contention.

(plaintiffs and the defendant Government officials) in the District Court case, *Duncan* v. *Andrus*, *supra*. This "Agreed Statement" was specifically adopted by the District Court. That court's opinion (which also contains its independent findings) is likewise a source of underlying predicates for our determination; under the principles of collateral estoppel there can be no relitigation of the issues determined in that related proceeding by the same plaintiffs against high federal officials (acting in their official capacity). *See, e.g.*, *Edgar* v. *United States*, 145 Ct. Cl. 9, 171 F. Supp. 243 (1959); *McGinty* v. *United States*, 151 Ct. Cl. 399, 403 (1960), *cert. denied*, 368 U.S. 867 (1961); RESTATEMENT (SECOND) OF JUDGMENTS, § 80, Comment e at 22-23, Reporter's Note at 29 (Tent. Draft No. 2, 1975).[2]

Rancherias are numerous small Indian reservations or communities in California, the lands for which were purchased by the Government (with congressional authorization) for Indian use from time to time in the early years of this century—a program triggered by an inquiry (in 1905-06) into the landless, homeless or penurious state of many California Indians. We are now concerned with the Robinson Rancheria (in Lake County California) which consists of the Rancheria proper and a nearby uninhabited wood reserve, known as the "Woodlot." The

[2] Defendant, although characterizing or interpreting the facts in the Agreed Statement and the District Court's opinion somewhat differently from plaintiffs, does not basically contest those facts.

Rancheria land was purchased in 1909 under authorization contained in Indian appropriations acts of 1906 and 1908. The Rancheria was occupied by a California band of Pomo Indians and the land was informally assigned to families of that band.

After several investigations and much debate, Congress in 1958 passed an act providing for the termination of various rancherias and reservations, including the Robinson Rancheria. Pub. L. No. 85-671, 72 Stat. 619 (1958) (the "Rancheria Act"). This law provided for termination of the special status (as Indian lands) of various California rancherias upon approval by a majority of the affected Indians of a final distribution plan. Section 3 of the Act directed the Secretary to undertake various construction projects and improvements on the Indian land before conveying it under the distribution plan. Section 3(c), which founds the gravamen of plaintiffs' complaint, required the Secretary to: "install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States." Rancheria Act, 72 Stat. 619, 620 (1958).[3] Under

[3] Section 3(c) was significantly modified by the 1964 amendments to the Rancheria Act. The amendments expanded the scope of the Secretary's responsibility to include sanitation facilities and delegated responsibility for sanitation facilities to the Department of Health, Education, and Welfare. *See* Pub. L. No. 88-419, 78 Stat. 390 (1964). Even before the 1964 amendments (which were effective before termination of the Robinson Rancheria) it was clear that the Government had some responsibility to provide Indians with sanitation systems. Under a 1959 statute the Surgeon General was authorized to construct or improve sanitation facilities on Indian lands. Pub. L. No. 86-121, § 1, 73 Stat. 267, *amending* Pub. L. No. 568, ch. 658, 68 Stat. 674 (1954) (codified at 42 U.S.C. § 2004a (1976)).

the Act termination of the Rancheria ended the rights of the Indians to receive special federal services *qua* Indians, and exposed rancheria lands to state tax liability and regulations. Rancheria Act § 10(b), 72 Stat. 619, 621 *as amended by* Pub. L. No. 88-419, § (h), 78 Stat. 390, 391 (1964); *see* Rancheria Act § 2(d), 72 Stat. 619.

Pursuant to the Act, the Secretary of the Interior developed a distribution plan for the Robinson Rancheria which won majority approval in March 1960. The plan provided for distribution of Rancheria lands to 28 named Indians and for the woodlot and certain community property to be conveyed to an association of the Robinson band. Although distribution of Rancheria assets was completed in 1963, final termination was delayed by negotiations over construction of a sewage system. A final termination notice was published in the *Federal Register* on September 3, 1965. 30 Fed. Reg. 11,330-31 (1965).

Despite serious and well-known water shortages at the Rancheria (the water supply was not sufficient for reasonable domestic needs and was inadequate to irrigate domestic gardens or farm lands), the Secretary made no significant provision for the improvement of Rancheria water supplies prior to termination. The only agreement relating to additional water supplies was a statement in the distribution plan that:

> The Indians of Robinson Rancheria request that the Bureau of Indian Affairs undertake the following actions: * * * (2) Provide water for any residence under construction that is as much as fifty percent completed within a ninety-day period after acceptance of this plan by a majority of the adult Indian distributees, as provided in Section 2(b) of Public Law 85-671.

This statement does not guarantee an adequate year-round water supply, and the record does not indicate how many, if any, of the affected Indians had houses fifty percent complete within the requisite 3-month period.

Similarly, the existing Rancheria sanitation system was grossly inadequate. Most homes lacked any internal plumbing, and there was no water-carried waste system on the Rancheria. After learning of the 1959 statute authorizing the Surgeon General's office to construct water disposal systems on Indian lands, the Robinson band requested a sewage system. *See* Pub. L. No. 86-121, § 1, 73 Stat. 267 (codified at 42 USC § 2004a (1976)). The Public Health Service did install some septic tank and absorption field facilities pursuant to a 1964 agreement with the Indians, but some of the absorption fields proved inadequate and no adequate water-carried sewage system was ever provided.

After the initial distribution of Rancheria assets in 1961, Lake County imposed a real property tax on lands held by the Robinson band. This taxation continued until 1977, when the District Court found that the Robinson Rancheria had been unlawfully terminated. *Duncan* v. *Andrus*, *supra*, Nos. C-71-1572 & C-71-1713, memo. op. at 11 (N.D. Cal. March 22, 1977).[4] That court granted various types of non-monetary injunctive and declaratory relief, including (a) voiding of the termination insofar as it ended the plaintiffs' status as Indians and their eligibility for federal services and benefits provided to Indians by the United States, (b) retention by the plaintiffs (and all dependent members of their families) of their status as Indians under federal law, (c) continued application to the Indians of the Robinson Rancheria of all statutes of the United States which affect Indians because of their status as Indians, and (d) restoration of trust status to the land and assets of the Robinson Rancheria where possible.

II.

Jurisdiction Over Breaches of Trust

We begin with the premise that this court has jurisdiction to award certain types of damage for breach of trust. Defendant has made a threshold attack on this court's jurisdiction, arguing that, even if a statute establishes a trust relationship, that law

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[4] The District Court placed its decision primarily on the Government's failures with respect to the water and sanitation facilities. The judge also pointed out that "[t]he Indians of the Robinson Rancheria were not represented by counsel in negotiating and approving the termination agreement" and suggested that the Government's procedure in dealing with those Indians with respect to the water systems was not fully fair.

does not "fairly mandate compensation" under the *Eastport Steamship* standard adopted by the Supreme Court in *Testan*. *See Eastport S.S. Corp.* v. *United States*, 178 Ct. Cl. 599, 607, 372 F.2d 1002, 1009 (1967), *quoted in United States* v. *Testan*, 424 U.S. 392, 400 (1976). The definitive answer is that this broad jurisdictional attack was recently rejected en banc in *Mitchell* v. *United States*, 219 Ct. Cl.—— (Jan. 24, 1979). Defendant's arguments were fully considered and disapproved in that case. Nos. 772-71, 773-71, 774-71, 775-71, slip op. at 2-3, 4-5 & n.12 (Ct. Cl. Jan. 24, 1979). Further, this court and another court have previously awarded damages for a Government breach of trust with respect to other rancherias. *See Coast Indian Community* v. *United States*, 213 Ct. Cl. 129, 152-56, 550 F.2d 639, 652-54 (1977) (damages for breach of trust in selling rancheria land at price grossly below market value); *Manchester Band of Pomo Indians, Inc.* v. *United States*, 363 F.Supp. 1238 (N.D. Cal. 1973) (finding liability for Government breach of trust under 28 U.S.C. § 1346(a)(2), the district court analogue to the Tucker Act).

Starting from *Mitchell*, we proceed to the four issues remaining in the case: did a trust relationship exist between the United States and the Robinson Rancheria Indians; if so, was the trust breached; if breached, what types of damages can plaintiffs properly claim; are plaintiffs' claims barred by the statute of limitations?

III.

The Trust Relationship

In *Duncan* v. *Andrus*, *supra*, the District Court found that until the purported termination legal title to the land of the Robinson Rancheria remained in the United States, "although it was acknowledged that the United States held in trust for the California Indians." [5] Not only are we bound by that ruling under the doctrine of issue preclusion, but we agree with it and come to the same conclusion on our own. We do so on the basis of the context and language of the original appropriations acts authorizing purchase of the Robinson tract; the contemporaneous and continuing interpretation by the agency charged with supervision of the rancherias; and the wording of the 1958 Rancheria Act demonstrating a subsequent Congress' acknowledgment of the trust relationship.

The original appropriations acts which authorized purchase of the Robinson (and other) rancheria lands were passed in response to the Kelsey Report. At the request of the Indian Office Mr. Kelsey had surveyed the situation of California Indians and recommended that Congress appropriate monies to provide reservations for homeless Indians, and adequate water-

[5] The court's decree held the Secretary of the Interior and his subordinates "under a continuing duty to restore trust status to the lands and assets of the Robinson Rancheria where possible." Some of the lands had been sold in good faith to non-Indians during the period of the unlawful termination (1965-1977) and restoration of trust status was not required as to such lands.

supplied allotments for Indians holding desert allotments. *See Duncan* v. *Andrus*, Nos. C-71-1572 & C-71-1713, memo. op. at 2-3 (N.D. Cal. March 22, 1977). In 1906 Congress accepted the basic recommendation, authorizing expenditures to purchase land "for the use of the Indians in California." Act of June 21, 1906, Pub. L. No. 258, ch. 3504, 34 Stat. 325, 333 (1906). The 1906 authorization was renewed in substantially the same terms in 1908, and in 1909 the Robinson land was purchased. *See* Act of April 30, 1908, Pub. L. No. 104, ch. 153, 35 Stat. 70, 76-77 (1908).

While not expressly stating that the United States held the land as trustee, Congress clearly contemplated that this land have the same status as reservation lands. In addition to purchasing lands the 1906 Act authorized the Secretary of the Interior to "fence, survey and mark the boundaries of such Indian Reservations." *See generally* UNITED STATES DEPARTMENT OF THE INTERIOR, FEDERAL INDIAN LAW 609 (rev. ed. 1958) (not necessary that Congress use the word "reservation" to create Indian reservation lands). Congress need not expressly use a talismanic phrase such as "trust relationship" or "hold in trust" in order to establish a trust relationship. *See Cherry* v. *United States*, No. 73-77, slip op. at 6-7 (Ct. Cl. Feb. 21, 1979).

This interpretation of the appropriations statutes is reinforced by the Interior Department's long-standing presumption that the United States had a

trust duty to the Robinson band.[6] The Agreed Statement of Facts at pages 12-13 states:

> While the deed to the United States from Jesse Bryant Robinson and his wife did not mention the fact that the Rancheria was to be occupied by Indians and did not expressly create a trust, it was always understood by the Interior Department—after the purchase of the Rancheria—that it was being held by the United States for the use of the East Lake or Robinson Pomo Indians.

It is a "venerable principle" that an agency's long-standing interpretation of a statute it is charged with implementing is entitled to great weight. *See, e.g., Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381 (1969); *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 121 (1973) (quoting *Red Lion*); *Vogt* v. *United States*, 210 Ct. Cl. 246, 252-53, 537 F.2d 405, 409 (1976); *Sode* v. *United States*, 209 Ct. Cl. 180, 187, 531 F.2d 531, 535 (1976). This principle is particularly compelling when the agency interpretation is reinforced by subsequent congressional legislation (here the 1958 Rancheria Act). *E.g., NLRB* v. *Bell Aerospace Co.*,

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[6] At oral argument counsel for defendant initially appeared to concede that the United States had a statutory trust duty to the Robinson band. Later, counsel apparently withdrew or significantly modified this concession. Whatever defendant's exact position in this litigation, there is no evidence contradicting the view that the responsible agency, the Interior Department, has always believed the United States was trustee of lands for the Robinson band.

416 U.S. 267, 275 (1974); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381-82 (1969). The Rancheria Act clearly states the understanding of the 1958 Congress that Rancheria lands had been and would continue to be held in trust until final termination. For example, section 9 of the Act allows the Secretary to provide the Indians with special education and training programs "[p]rior to the termination of the Federal trust relationship in accord with the provisions of this Act * * *" Pub. L. No. 85-671, § 9, 72 Stat. 619, 621 (1958); *see id.* at § 3(e), 72 Stat. 619, 620.[7] Another accepted canon states that subsequent legislation declaring the meaning of an earlier statute is entitled to great weight where the earlier legislation permits that interpretation. *See, e.g., Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 380-81 & n.8 (1969); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 275 (1974). On the bases of the original authorization acts, reinforced by a long-standing agency interpretation and subsequently confirming congressional legislation, we find (as did the District Court in *Duncan* v. *Andrus, supra*) that the United States did have a trust relationship with the Indians on the Robinson Rancheria. *Cf. Smith* v. *United States*, Nos. C-74-1016, WTS, C-74-1061 WTS (N.D. Cal. March 29, 1978) (finding trust relationship with Hopland Rancheria).[8]

[7] Section 3(e) refers to land exchanges "before the termination of the Federal trust."

[8] The unreported district court case (currently on appeal in the Tenth Circuit Court of Appeals) cited to us by defendant), *Whiskers* v. *United States*, No. C-314-73 (Cen. D. Utah March 22, 1977), is not contrary to our conclusion. The District Court in *Whiskers* held it lacked jurisdiction over part of that plaintiff's claim simply because it found no trust relationship created by the statute (different from the Rancheria statutes) before it.

IV.

Breach of Trust

Defendant concedes that termination of the Robinson Rancheria was unauthorized because Interior did not provide required water and sanitation systems. As we have emphasized, the District Court for the Northern District of California has independently found that the termination was unauthorized. *Duncan* v. *Andrus*, Nos. C-71-1572 & C-71-1713, memo. op. at 7-10 (N.D. Cal. March 22, 1977). However, defendant argues to us that, although unauthorized, the premature termination was not a breach of trust. Defendant's theory is that the Government had considerable discretion under the 1958 and 1964 statutes, that Interior did provide some water and sewage facilities, and therefore its actions were reasonable, and not a breach of trust. On this record, that theory must fail.

First, *Duncan* v. *Andrus* has already determined that there was a breach of trust. That court held that in negotiating with the Rancheria Indians the Secretary of the Interior "must come to the bargaining table as a fiduciary or trustee of the Indians," but that "the Secretary has fallen far short of his obligations in this case. * * * The Secretary has ensured

neither fairness of procedure nor fairness of result in the Robinson Rancheria water system * * *." We know of no adequate reason why these prior determinations in a suit between the same litigants should fail to be binding on defendant and on us. *Cf. Parklane Hosiery Co.* v. *Shore*, 47 U.S.L.W. 4079 (1979).

Second, even if we were to canvass the issue anew, we would come to the same result. Although the Secretary has discretion as to the amount and kind of water and sanitation systems, this does not allow him to terminate before ensuring a water supply sufficient to meet reasonable domestic needs. Section 3(c) of the Rancheria Act demonstrates a congressional purpose to provide the Indians with sufficient water systems to become self-sufficient by the time of termination. *See* the discussion in *Duncan* v. *Andrus*, Nos. C-71-1572 & C-71-1713 (N.D. Cal. March 22, 1977). The uncontested facts show that the Secretary fell considerably short of providing sufficient water supplies to the Robinson Rancheria.

Moreover, the standard of duty for the United States as trustee for Indians is not mere "reasonableness," but the highest of fiduciary standards. *See, e.g., United States* v. *Mason*, 412 U.S. 391, 398 (1973); *Coast Indian Community* v. *United States*, 213 Ct. Cl. 129, 153, 550 F.2d 639, 652-53 (1977); *Cheyenne-Arapaho Tribes* v. *United States*, 206 Ct. Cl. 340, 345, 512 F.2d 1390, 1392 (1975); *Manchester Band of Pomo Indians, Inc.* v. *United States*, 363 F.Supp. 1238, 1243 (N.D. Cal. 1973). Under these exacting fiduciary standards the Secretary

breached his trust obligations. Procedurally, Interior failed to disclose adequately to the Indians their statutory rights to water-carried sewage systems or the limits on congressional funds provided for pretermination services. Substantively, the distribution plan's agreement on water supplies was so vague and uncertain as to breach the trustee's duty of fair dealing. *See* the discussion in *Duncan* v. *Andrus*, *supra; cf. Smith* v. *United States*, Nos. C-74-1016 WTS & C-74-1061 WTS (N.D. Cal. March 29, 1978) (United States breached its trust duty to Hopland Rancheria Indians by failing to provide adequate water supplies); *see generally* RESTATEMENT (SECOND) OF TRUSTS § 170 (1959); 2 A. SCOTT, THE LAW OF TRUSTS § 170 at 1298 (1967) (trustee must disclose material facts, make fair transactions in dealing with beneficiaries).[9] On the materials before us, there is no doubt that a serious breach of trust occurred.

V.

Damages

Plaintiffs present a wide variety of damage demands outlined in three separate claims. The first, based on the Government failure to supply adequate

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[9] This is not a complete catalogue of the breaches which may have been committed, but examples of the types of breaches caused by the concededly unauthorized termination. By citing a breach of trust denominated as a duty of fair dealing we are not invoking the "fair and honorable dealing" jurisdiction of the Indian Claims Commission. Rather, we merely illustrate a breach of duty under a statutory trust.

water and on the termination itself, seeks recovery of $100,000 for each plaintiff for a number of resulting injuries including losses caused by subjection to real property taxes, deprivation of various federal services to Indians, partial destruction of the Pomo culture, and emotional distress and bodily injuries.[10] The second claim, predicated on Government failure to provide adequate sanitation facilities, requests $10,000 for each plaintiff based on the following three injuries:

a) They have been deprived of operable sanitation and waste-disposal facilities for over ten years, have been forced to resort to outdoor

[10] Plaintiffs' petition lists the damages under the first claim as follows:

(a) The integrity of their Rancheria has been destroyed, and much of the Rancheria's lands have falled [sic] into non-Indian ownership;
(b) They, and other Indians of Robinson Rancheria, have been subjected to land taxation;
(c) Their native Pomo culture has been partially destroyed and is now grievously threatened with complete extinction;
(d) They, and other Indians of the Rancheria, have been subjected to regulation by California of home building activities on the Rancheria which are inconsistent with an Indian way of life;
(e) They have been forced to live without adequate water or sanitation facilities for more than ten years;
(f) They have suffered, as a result, grevous [sic] emotional distress and bodily injuries;
(g) They, and their dependents, have been deprived of eligibility for a wide variety of federal services and benefits provided to Indians by the United States because of their status as Indians.

privies, and have gone without indoor privies, and have gone without indoor bathing facilities;

b) They have been deprived of indoor plumbing and the opportunity to raise their families in a decent, safe, and sanitary condition;

c) They will, in the future, be deprived of such sanitation facilities.

The third claim seeks recovery for Interior's failure to reserve a right-of-way easement to the community woodlot. Damages in the amount of $5,000 for each plaintiff are sought for these deprivations:

a) They have been deprived of access to their woodlot for over ten years;

b) They have been deprived of marketable title to their woodlot for over ten years;

c) Their woodlot has been decreased in value and they will be deprived in the future of access to it.

While some of plaintiffs' damage claims clearly fall within types of monetary damages previously considered by this and other courts, other demands are premised on unusual theories (compensation for injury to native culture or for psychological injuries). A survey of recent Indian cases in this court alleging a Government breach of trust reveals that monetary damages have been limited to tangible, direct injuries to property or to direct losses due to denials of required services. In *Klamath & Modoc Tribes* v. *United States*, 174 Ct. Cl. 483 (1966), the Indians sought recovery for reservation property sold by the

Government at an allegedly inadequate price.[11] In *Navajo Tribe* v. *United States*, 176 Ct. Cl. 502, 364 F.2d 320 (1966), the court awarded damages on one claim for a Government breach of trust in failure to notify the Indians of an assignment of their lease; damages were calculated based on the then present value of the lease. In *Capoeman* v. *United States*, 194 Ct. Cl. 664, 440 F.2d 1002 (1971), the plaintiffs' breach of trust claims were grounded on allegedly unjustifiable Government costs assessed from sales of timber from Indian property. The same damage claims were also raised in *Quinault Allottee Ass'n* v. *United States*, 202 Ct. Cl. 625, 485 F.2d 1391 (1973), *cert. denied*, 416 U.S. 961 (1974). Plaintiffs had an even more tangible damage claim in *Cheyenne-Arapaho Tribes* v. *United States*, 206 Ct. Cl. 340, 512 F.2d 1390 (1975), alleging the Government as trustee mismanaged specific funds held for the Indians. In a recent case which awarded damages on a breach of trust claim, *Coast Indian Community* v. *United States*, 213 Ct. Cl. 129, 550 F.2d 639 (1977), the court compensated plaintiffs for a sale by the Government of an Indian right-of-way at a grossly inadequate price. The calculation of damages was based on the difference between the

[11] Because the case was presented to the court on defendant's motion to dismiss for lack of jurisdiction, the court did not analyze what damages were recoverable. In a subsequent consideration of the same claims, the court found liability as to certain lands only on a fifth amendment taking theory. *Klamath & Modoc Tribes* v. *United States*, 193 Ct. Cl. 670, 436 F.2d 1008, *cert. denied*, 404 U.S. 950 (1971).

fair value of the right-of-way and the actual sale price. Most recently in *Mitchell* v. *United States*, 219 Ct. Cl.—(Jan. 24, 1979), this court remanded for further proceedings breach of trust claims based on a failure to properly manage Indian lands or to invest Indian funds. Nos. 772-71, 773-71, 774-71 & 775-71, slip op. at 2 n.4 (Ct. Cl. Jan. 24, 1979).

Similarly, a review of the Supreme Court's decision in *United States* v. *Mason*, 412 U.S. 391 (1973), and lower federal court cases cited to us reveals no cause in which any court considered damage claims as nebulous and remote as some urged here.[12]

This lack of precedent for recovery of monetary damages for consequential personal suffering or injury to the native culture reflects the difficulties which compel rejection of such claims. The doctrine of sovereign immunity, as applied to pecuniary claims in this court, requires the court to find that a statute

[12] In *Mason*, although the claims were rejected on the merits, plaintiffs claimed direct damages from allegedly invalid state tax assessments on their land. *See also Santa Rosa Band of Indians* v. *Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977) (claims based on county zoning regulations of Indian lands; only declaratory and injunctive relief sought); *Manchester Band of Pomo Indians, Inc.* v. *United States*, 363 F. Supp. 1238 (N.D. Cal. 1973) (damages arising from federal mismanagement of Indian trust funds); *Pyramid Lake Paiute Tribe* v. *Morton*, 354 F. Supp. 252 (D.D.C. 1972) (claims based on Secretary's misallocation of tribal water rights; declaratory relief granted); *Smith* v. *United States*, Nos. C-74-1016 WTS & C-74-1061 (WTS (N.D. Cal. March 29, 1978) (damages granted for state taxation of rancheria trust lands which were prematurely terminated).

can be interpreted as "mandating compensation by the Federal Government for the damage sustained." *Eastport S.S. Corp.* v. *United States*, 178 Ct. Cl. 599, 607, 372 F.2d 1002, 1009 (1967) *quoted with approval, United States* v. *Testan*, 424 U.S. 392, 400 (1976). We have found here, as in *Mitchell* v. *United States*, 219 Ct. Cl.—(Jan. 24, 1979), that this statutorily-created trust relationship does mandate certain types of compensation for a breach. However, it does not follow that the congressional scheme mandates compensation for every conceivable form of damages. As discussed *supra*, this and other courts have thus far found congressional allowance for basically two types of standard trust claims—losses due to mismanagement of trust funds, *see Capoeman* v. *United States*, 194 Ct. Cl. 664, 440 F.2d 1002 (1971); *Quinault Allottee Assn.* v. *United States*, 202 Ct. Cl. 625, 485 F.2d 1391 (1973), *cert. denied*, 416 U.S. 961 (1974); *Cheyenne-Arapaho Tribes* v. *United States*, 206 Ct. Cl. 340, 512 F.2d 1390 (1975), or losses due to mismanagement of tangible trust properties, *see Klamath & Modoc Tribes* v. *United States*, 174 Ct. Cl. 483 (1966); *Navajo Tribe* v. *United States*, 176 Ct. Cl. 502, 364 F.2d 320 (1966); *Coast Indian Community* v. *United States*, 213 Ct. Cl. 129, 550 F.2d 639 (1977); *Mitchell* v. *United States*, 219 Ct. Cl.—(Jan. 24, 1979). Direct monetary damage due to improper subjection to state or local taxes, as a result of a federal breach of trust, would also seem to fall squarely within the same category. *See Smith* v. *United States*, Nos. C-74-1016

WTS and C-74-1061 WTS (N.D. Cal. March 29, 1978); *cf. United States* v. *Mason*, 412 U.S. 391, 398 (1973). So would the value of benefits (*e.g.* health, education, and sanitary benefits) improperly withheld in breach of trust.

As we have indicated, at least two of plaintiffs' bases for claimed damage—injury to Pomo culture and consequential emotional and psychological injuries—go far beyond these types of damage, and we cannot find any express or implied congressional authorization for such a recovery. These demands are very close kin to charges of destruction of Indian peoplehood which even the broad rubrics of the Indian Claims Commission Act did not cover. *See Gila River Pima-Maricopa Indian Community* v. *United States* (Davis, J., concurring), 190 Ct. Cl. 790, 801, 427 F.2d 1194, 1200, *cert. denied*, 400 U.S. 819 (1970). Moreover, such alleged cultural or psychological injuries fall wholly outside of the purview or objectives of the statutory standards which Congress has often established for management of Indian funds or property. *See Mitchell* v. *United States*, Nos. 772-71, 773-71, 774-71, 775-71, slip op. at 9 (Jan. 24, 1979) (statutes cited by plaintiffs can "furnish congressional gauges of proper trustee conduct"); *Manchester Band of Pomo Indians, Inc.* v. *United States*, 363 F.Supp. 1238, 1243 (N.D. Cal. 1973) ("Congress has also been vigilant in setting forth the standards by which Government-managed Indian trust funds must be invested."). Nor do such cultural or emotional losses fall into the category of damages

where standards of duty and measures of recovery are provided by traditional trust law doctrines. *Cf. Coast Indian Community* v. *United States*, 213 Ct. Cl. 129, 550 F.2d 639 (1977) (sale of trust property at unfairly low price; damages based on difference between fair market value of trust land and actual sales price); *Navajo Tribe* v. *United States*, 176 Ct. Cl. 502, 364 F.2d 320 (1966) (assignment of lease without notice to beneficiary; damages based on market value of lease). In the absence of some indication of congressional authorization and without statutory or common law standards of trustee duty and of compensation, we cannot discover any mandate for allowance of these two alleged consequential losses.[13]

Other of the damage claims we leave open without decision until facts are more fully developed so as to reveal more precisely the circumstances of the asserted injury and the connection, direct or otherwise, between that loss and the Government's breach. In this group are the sale by Robinson Indians of

[13] The practical difficulties of assessing causation and an appropriate quantum of damages for such cultural and emotional injuries said to arise from a breach of trust are also considerable, not to speak of how to determine what was Pomo culture before the breach and what impact the breach had on the then-existing Indian society. The Supreme Court has recently implied, in a case involving judicial inquiry into tribal membership standards, that the federal judiciary might well be wary of entering into such uncharted fields: "Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters." *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 72 n.32 (1978).

much of the Rancheria's lands to non-Indian owners [14] and the subjection of the Robinson Indians to regulation by California of home-building activities. For the latter, if plaintiffs can demonstrate that the Government's unlawful termination exposed them to state regulations which directly increased the pecuniary costs of building or maintaining homes on the Rancheria, then recovery should be allowed (but damages should not be awarded because state regulation was "inconsistent with an Indian way of life"). As for alleged physical injuries to plaintiffs or their families due to the breach, we also leave the question of compensability open for future development and decision.

To sum up on damages, on remand to the Trial Division for determination of the extent and amount of Government liability, the trial judge should award: (a) damages directly due to the trustee's proven mismanagement (through misfeasance or nonfeasance) of land or physical property (*e.g.*, alleged failure to provide a right-of-way to the community woodlot), (b) the value of federal services improperly withheld, and (c) damages directly due to the loss of tax immunities during the invalid termination. Claims for injury to Indian culture (or for happenings inconsistent with the "Indian way of life") or for personal or family psychological distress are not recoverable. The other damages claims are left open

[14] This undecided category does not include the loss of land through tax sales—damages which we consider to be a recoverable and direct consequence of improper imposition of state or local taxes.

for later decision (depending in large part on the proof to be made).

VI.

Statute of Limitations

Defendant also contends that, even if this court has jurisdiction over the breach of trust claims, the action is barred by the six-year statute of limitations, 28 U.S.C. § 2501 (1976). The Government's point is that the invalid termination was announced on September 6, 1965, and plaintiffs' petition in this court bears the date of February 5, 1975, obviously more than six years later. The easiest reply is that plaintiffs had validly filed a claim for damages in the United States District Court (as part of *Duncan* v. *Andrus, supra*) on August 19, 1971, within the six-year period. After amending the complaint to increase damages above the District Court's $10,000 jurisdictional limit, plaintiffs were granted a transfer to this court under 28 U.S.C. § 1406(c) (1976). The transfer order was received here on January 17, 1975, and plaintiffs simply refiled their claim on February 5, 1975, to conform with the rules of this court. *See* CT. CL. R. 181.

The transfer statute clearly mandates that upon transfer the case shall proceed "* * * as if it had been filed in the Court of Claims on the date it was filed in the district court." 28 U.S.C. § 1406(c) (1976). This statute has been liberally construed to lift an otherwise existing statute of limitations bar, and this construction is amply supported in the legislative history. *E.g., Rothman* v. *United States*, No. 363-77

(Ct. Cl. order, Jan. 26, 1979); *see* S. REP. NO. 1894, 86th Cong., 2d Sess. 4 (1960) *reprinted in* [1960] U.S. CODE CONG. & AD. NEWS 3583, 3585. It is clear therefore that plaintiffs' claims are not barred.

Plaintiffs' motion for partial summary judgment on the issue of liability is granted. Defendant's motion to dismiss for lack of jurisdiction or for failure to meet the statute of limitations is denied. The case is remanded under Rule 131(c) to the Trial Division for determination of the nature and extent of damages in conformity with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Consolidated Actions:

No. C-71-1572 WWS

No. C-71-1713 WWS

MABEL DUNCAN, ET AL., PLAINTIFFS

v.

CECIL D. ANDRUS, ET AL., DEFENDANTS

MEMORANDUM OPINION AND ORDER GRANTING JUDGMENT

INTRODUCTION

Plaintiffs, who are current and former Indian residents of the Robinson Rancheria in Lake County, California, have brought these actions against the Secretary of the Interior, other named federal officers, and the Lake County Tax Collector. Plaintiffs allege in their complaints that the Robinson Rancheria was unlawfully and prematurely terminated under the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended,[1] thereby depriving them of

[1] P.L. 85-671 will be hereafter cited as the "Rancheria Act." It was amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390. Neither the 1958 Act nor the amendment were codified in Title 25 of the United States Code. The Act and the Amendment are included in Document #64, the Agreed Statement of Racts, as Exhibits #5 and #6 thereto.

federal Indian benefits and subjecting them to state and local taxation. They have sought declaratory and equitable relief rescinding the termination in this Court and monetary relief in the U.S. Court of Claims.[2]

The jurisdiction of this Court is asserted under 28 U.S.C. § 1331; the action arises under the laws of the United States, specifically the California Rancheria Act, 72 Stat. 619, as amended 78 Stat. 390. The parties have stipulated that the amount in controversy, exclusive of costs and interests, exceeds the sum of $10,000 as to each named plaintiff. (Doc. #64, p. 23.) The Court has independently examined this stipulation and has concluded that its estimate of the amount in controversy is reasonable and made in good faith in view of the rights involved in this action. Accordingly, the Court determines that it has jurisdiction of this action under 28 U.S.C. § 1331.[3] *Oneida Indian Nation* v. *County of Oneida*, 414 U.S.

[2] Plaintiffs filed their First Amended Complaint, containing six claims for relief, on December 30, 1974. The first four claims remain pending before this Court. The fifth claim, relating to woodlot access, has been dismissed without prejudice on stipulation of the parties. The sixth claim has been transferred to the Court of Claims pursuant to 28 U.S.C. § 1406(c), and remains pending in that Court.

[3] The $10,000 jurisdictional requirement has been eliminated as to suits against agencies and officers of the United States by amendment to 28 U.S.C. § 1331 by the Act of October 21, 1976, P.L. 94-574, § 2, 90 Stat. 2721. Because the Court has determined that the requisite amount in controversy is present, the question of the retroactivity of this provision need not be explored.

661 (1974); see also *Seber* v. *Board of County Commissioners*, 38 F.Supp. 731 (N.D. Okla. 1941), *aff'd as modified*, 130 F.2d 663 (10th Cir., 1942), *aff'd* 318 U.S. 705 (1943). The Court further determines that it has jurisdiction over the Lake County Tax Collector under 28 U.S.C. § 1343(3) and (4) as well as § 1331.

FACTS

The facts are not in dispute and are set forth in an Agreed Statement of Facts submitted by the parties and made a part of the file herein. (Docs. #64, 66). The Court hereby finds as facts for purposes of this opinion those items set forth in Documents #64 and 66. Rule 52(a), Fed.R.Civ.Pro.

Briefly summarized, the facts are: In 1906, C. E. Kelsey, a San Jose attorney, was commissioned by the United States Indian Office to investigate and report on the conditions of California Indians. Kelsey found that Indians had been forced from agriculturally productive lands and were then living on worthless lands in distressing conditions. (Doc. #64, Ex. #3, pp. 3, 12.) He recommended to the Commissioner of Indian Affairs that the government purchase land for individual Indian families in tracts not exceeding ten acres. Kelsey recommended that the land purchased "be of good quality and proper water supply . . . [and be] . . . located in the neighborhoods in which the Indians wish to live." (*Id.* at pp. 23-24.)

Kelsey's report was submitted to Congress through the Commissioner of Indian Affairs and the Secretary of the Interior with a recommendation that his plan for California Indians be adopted. As a result of these actions, the Indian Office Appropriation Act of 1906 appropriated $100,000 and authorized the Bureau of Indian Affairs to:

> "purchase for the use of the Indians of California now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in said State, suitable tracts or parcels of land, water, and water rights in said State . . . as the Secretary of the Interior may deem proper." Act of June 21, 1906, 34 Stat. 325, at 333 (Doc. #64, pp. 10-11).

Parcels of land, called rancherias, were purchased under the 1906 Act and under subsequent acts to implement Kelsey's original scheme. In all, approximately 82 rancherias located primarily in Northern and Central California were purchased for California Indians.[4]

Robinson Rancheria, the subject of this action, was purchased by the United States in 1909 under authorization contained in the Acts of June 21, 1906, and April 30, 1908.[5] It was occupied upon its purchase by a band of California Indians of Pomo stock. It was informally broken up by the band at the out-

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[4] The appropriations for most of these purchases came from the 1914 "Homeless Indian" appropriation and its progeny. Act of August 1, 1914, C. 222, § 3, 38 Stat. 582, at 589.

[5] The Act of 1906 may be found at 34 Stat. 325; the Act of 1908 at 35 Stat. 70.

set into unsurveyed parcels which were assigned to family heads as homesites. The Bureau of Indian Affairs apparently knew of and acquiesced in this system of informal allottment. Legal title to the land remained in the United States, although it was acknowledged that the United States held in trust for the California Indians. (Doc. 64, p. 12-13.)[6]

In the decades following 1944, the usefulness of the Rancheria system was debated in the Executive Branch as well as in Congress. Congressional attitudes during this period reflected a desire rapidly to end Indian dependence on federal services, curtail the Indian services bureaucracy, and assimilate Indians into the mainstream of the United States culture. These objectives were to be accomplished in part by granting legal title to Rancheria land to individual Indians and terminating federal benefits and services to such Indians.

Authority for termination of federal supervision over, and distribution of the assets of Robinson-Rancheria was provided by Congress in 1958. P.L. 85-671, 72 Stat. 619.[7] Section 1 of the Act provides that the assets of 41 named Rancherias (including Robinson Rancheria) "shall be distributed in accordance with the provisions of this Act." Section 2(a)

[6] In addition to the Robinson Rancheria proper, which was occupied by the band, a Secretarial Order of 1907 set aside 160 acres as a wood reserve. This tract, known as the Woodlot, is not inhabited.

[7] The 1958 Act was amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390.

requires that a plan be prepared by the Indians of each Rancheria or by the Secretary of the Interior after consultation with the Indians. But Section 2 (b) manifests the clearly *permissive* character of any execution of the plan, mandating that the plan be carried out only if approved by a majority of the Indians voting in a referendum.

Section 3(c) of the Rancheria Act, the section critical to this action, requires the Secretary to undertake certain action with respect to Rancheria water systems before conveying the land outright to the Indians. That section provides:

> "Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior *is directed*: . . .
>
> (c) to install or rehabilitate such irrigation or domestic water systems *as he and the Indians affected agree*, within a reasonable time, should be completed by the United States." (Emphasis added.)

Acting under authority conferred upon the Secretary by Section 2(a) of the 1958 Act, the Bureau of Indian Affairs met with the Indians of the Robinson Rancheria and developed a tentative plan for the distribution of the Rancheria's assets. Preliminary approval was given to the plan by the Commissioner of Indian Affairs and a "general notice" of the plan was given to proposed Indian distributees pursuant to an implementing federal regulation, 25 C.F.R. § 242.4. After a 30 day appeal period had expired, the plan was finally approved and submitted

to a referendum vote of the distributees. The plan as submitted was accepted by a vote of 24 "yes" and 1 "no" and became effective on March 10, 1960.

As approved and accepted, the Distribution Plan called for conveyance of the Rancheria's lands to 28 named Indian distributees. The plan also provided that certain Rancheria lands (including a church lot, woodlot, cemetery, and three small well lots) would be conveyed to a "legal entity" to be held for communal purposes. Deeds were subsequently issued to distributees and recorded. A deed to the communal areas was issued to the Robinson Pomo Association, an unincorporated association formed through the efforts of the Bureau and subscribed to by Indian distributees, and recorded. The assets of Robinson Rancheria were distributed in this fashion between 1961 and 1963. *Significantly, the plan made no provision regarding general water, sanitary, or irrigation systems on the Rancheria.*

On August 11, 1964, before the Secretary had published an official notice of termination of the Robinson Rancheria in the Federal Register, Congress amended the 1958 Act. Included in the amendment was a revised Section 3(c) which provided as follows:

> "Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior *is directed*: * * * (c) to construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures) and irrigation facilities for Indian homes, communities and lands, as he and the Indians agree, within a reasonable time, should be provided by the United States: *Provided*, That with respect to sanitation facilities, as hereinbefore described, the functions specified in this paragraph, including agreements with Indians with respect to such facilities, shall be performed by the Secretary of Health, Education, and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. § 2004a)."

On September 3, 1965, the Secretary published official notice of the termination of Robinson Rancheria in the Federal Register. 30 F.R. 11330. Publication of such a notice constitutes the Secretary's finding that all duties under the Rancheria Act had been performed and that Indian distributees and their families were "terminated", i.e. no longer eligible for federal benefits provided to Indians.[8]

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[8] The 1959 Regulations (24 F.R. 4652, § 242.10) provide:

> "When the provisions of a [distribution] plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a proclamation declaring that the special relationship of the United States to the rancheria or reservation and to the distributees and the dependent members of their immediate families is terminated. The proclamation shall list the names of the distributees and dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indian."

The Agreed Statement of Facts includes a description of the water and sanitation facilities on the Rancheria before, during, and after termination. (Doc. #64, pp. 19-32.) The statement establishes that: (1) there is no adequate irrigation for home gardens on the Rancheria; (2) the Rancheria has never had an adequate water system for domestic uses; shallow wells provide intermittent quality and quantity of water; (3) the inadequate water system has resulted in problems with sanitary waste disposal. Following enactment of the 1964 amendments to the Rancheria Act, no agreements were made between Robinson Rancheria Indians and the Secretaries of the Interior and/or Health, Education, and Welfare regarding the installation or upgrading of a domestic water system for the Robinson Rancheria.

Since the assets of the Rancheria were distributed in 1961, approximately 77% of its usable acreage (not including roadways) has passed into non-Indian ownership, and at least six new, non-Indian homes have been constructed thereon. Some of these homes have developed their own wells. (Doc. #24, p. 27.) Plaintiffs in this action consist of named Indian distributees, members of their families, and their Indian transferees, some of whom remain on the Rancheria and some of whom have sold all or part of their land to third parties.

Was the Termination of Robinson Rancheria Authorized by the California Rancheria Act of 1958?

The essence of plaintiffs' argument in this action is that the termination of Robinson Rancheria was not authorized by the Act of 1958 because the Secretary failed to provide adequate water facilities before conveying the land to individual distributees. Defendants, through counsel, have conceded that the termination was unauthorized. (Defendant's Brief in Response, Doc. #77.) Since interpretation of the 1958 Act is essential to the proper disposition of this action in all respects, the Court will not rely on the concessions of the parties, but will examine independently the duties of the Secretary and the rights of Indian distributees under the Act.

Section 3(c) of the 1958 Act *directed* the Secretary to install or rehabilitate water systems *before* conveying Rancheria land to Indian distributees. The 1964 amendment to the section retains the same mandatory structure, with two elaborations: (1) it made more specific the means of fulfilling the Secretary's obligation and the scope of the facilities covered; and (2) it added an obligation on the part of the Secretary of Health, Education, and Welfare with respect to sanitation facilities, including domestic water systems.

Both versions of Section 3(c) and the surrounding provisions of the Rancheria Act support the inference that Congress intended some sort of action by the Secretary regarding water facilities to be a

condition precedent to termination. Nothing in the surrounding provisions or in the legislative history of the Act contradicts this inference. The exact nature of the action required by the Secretary, however, presents a more difficult problem. The section requires performance of such construction, installation, etc., as the Secretary and the Indians "*agree*, within a reasonable time, should be provided by the United States." The mandate of this section could be regarded as no more than a dictation of terms by the Secretary. Under this interpretation, a failure of agreement or passage of a reasonable time without agreement would extinguish the Secretary's duties and the corresponding rights of the Indians.

But such an interpretation would drain any content from the Rancheria Act and would conflict with established law governing the interpretation of legislation for the benefit of Indians. As the Supreme Court recognized in passing in *Northern Cheyenne Tribe* v. *Hollowbreast*, 96 S.Ct. 1793, 1797, n. 7 (1976) "statutes passed for the benefit of the Indians are to be liberally construed, and all doubts are to be resolved in their favor." See also, *Bryan* v. *Itasca County*, 96 S.Ct. 2102 (1976); *Squire* v. *Capoeman*, 351 U.S. 1, 6-7 (1956); *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 89 (1912); *Worchester* v. *Georgia*, 31 U.S. (6 Pet. 515) 350 (1832). The Court of Appeals for this circuit has also termed the canon of construction favoring Indians "a fundamental postulate," *Santa Rosa Band of Indians* v. *Kings County*, 532 F.2d 655, 660 (9th Cir. 1975), and explained its significance as follows:

"This principle is somewhat more than a canon of construction akin to a Latin maxim, easily invoked and as easily disregarded. It is an interpretive device, early framed by John Marshall's legal conscience for ensuring the discharge of the nation's obligation to the conquered Indian tribes. The federal government has long been recognized to hold, along with its plenary power to regulate Indian affairs, a *trust status toward the Indian—a status accompanied by fiduciary obligations.* [Citations omitted.] While there is legally nothing to prevent Congress from disregarding its trust obligations and abrogating treaties or passing laws inimical to the Indians' welfare, the Courts, by interpreting ambiguous statutes in favor of Indians, attribute to Congress an intent to exercise its plenary power in the manner most consistent with the nation's trust obligations." 532 F.2d at 660 (emphasis added).[9]

The above quoted language applies with particular force to the statutory scheme involved in the case at bar. Here, Congress is attempting to end its traditional trust relationship with a group of Indians and to place them on the road to economic self-sufficiency. It was the manifest intent of Congress in

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[9] Principles of the law of trusts have been used to determine the nature and scope of federal obligations to the Indians. *Coast Indian Community* v. *United States*, No. 850-71 (U.S. Ct. Cl., February 23, 1977). The relationship of the federal government and the Indians has also been characterized as "that of a ward to his guardian." *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). See also *Gladys Stray Calf* v. *Scott Land and Livestock Co., et al.*, No. 75-1946 (C.A. 9, December 30, 1976), p. 5-6 (Wallace, J., dissenting).

enacting the Rancheria Act to grant to Indian distributees economic resources in fee simple that would enable them to sustain themselves as productive and useful citizens, independent of collateral federal programs and benefits. Obviously, of critical importance in such a transformation is conveyance of livable and agriculturally viable land. And, as recent events in California abundantly illustrate, water is an indispensable incident of such land.

The above considerations demand that Section 3 (c) be construed to require more than mere agreement or failure to agree within a certain time to discharge the Secretary's obligation. The Secretary must come to the bargaining table as a fiduciary or trustee of the Indians. He must ensure that genuine, good faith bargaining is undertaken by two sides which are fully and competently represented. He must be ready, willing, and able to consider the reasonable needs of the Indians and their land. Finally, and most critically, the Secretary must bear ultimate responsibility for the fairness of the result, measured according to the purposes of the Act.

Judged according to the principles stated above, the Secretary has fallen far short of his obligations in this case. The Indians of the Robinson Rancheria were not represented by counsel in negotiating and approving the termination agreement. There is no evidence that the Secretary ever evaluated or considered the water system; the system today is inadequate. The Secretary has ensured neither fairness of procedure nor fairness of result in the Robinson

Rancheria water system; therefore, equitable relief is appropriate.

Scope of Appropriate Relief.

At the Court's request, both parties submitted proposed forms of judgment and decree and briefed the issues of relief. The proposed forms and briefs do not reveal any irreconcilable differences regarding the scope of relief. Both parties agree on the fundamental issue—Robinson Rancheria must be "unterminated" and its distributees and their families must be given the opportunity to regain federal benefits lost through termination. Several additional considerations have moved the Court toward the particular form of judgment adopted; these will be briefly discussed to account for the Court's particular exercise of equitable discretion in this case.

First, the Indian distributees are entitled to prompt relief restoring their federal benefits, but respecting the vested rights in the Rancheria land which they have acquired through the operation of federal regulations. See, 25 C.F.R. § 242.7 (1960); 24 F.R. 4652-4654 (June 9, 1959). This will be accomplished through a declaration that the termination of Robinson Rancheria is void and an order directing the Secretary of the Interior to rescind the notice of termination and restore all federal benefits. Appropriate notice to Rancheria Indians of this action will be given.

Second, the rights of third party non-Indian good faith purchasers, who now hold 77% of the residential acreage on the Rancheria, must be protected.

These transferees may have taken record title without knowledge of the intricacies of the fiduciary obligations of the Secrtary and any resulting ownership defects. This will be accomplished through a declaration that only Indian distributees or their Indian transferees hold under voidable deeds. Only these persons will have the option of reconveying to the government. Those distributees who sold their land will retain their right to pursue monetary remedies in the Court of Claims.

Third, the state tax status of Rancheria land is dealt with in accordance with a Stipulation executed by the parties and filed with the Court on June 7, 1976. In that stipulation, the Tax Collector of Lake County stated her intention not to appear further in this action and stipulated to a permanent injunction regarding tax action in the event this Court found the Robinson Rancheria termination unlawful. (Doc. # 67.)

For the reasons stated above and good cause appearing:

IT IS HEREBY ORDERED that the Clerk of this Court shall enter judgment in this action as hereinafter set forth.

DATED: March 21, 1977.

/s/ William W. Schwarzer
WILLIAM W. SCHWARZER
United States District Judge

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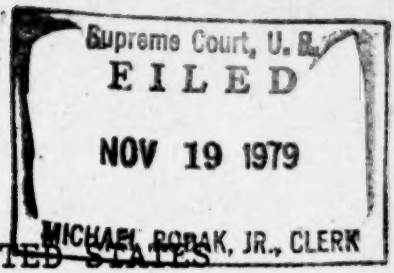

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 79-326

UNITED STATES OF AMERICA,

Petitioner,

v.

MABEL DUNCAN, et al.,

Respondents,

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	Page
QUESTION PRESENTED	1
FEDERAL LAWS INVOLVED	3
STATEMENT OF THE CASE	4
REASON FOR DENYING THE PETITION	18
CONCLUSION	29
APPENDIX A 28 U.S.C. §1491	App. A-1
APPENDIX B California Rancheria Act	App. B-1
APPENDIX C Rancheria Act Regulations, 25 C.F.R. Part 242	App. C-1

TABLE OF AUTHORITIES

CASES	Page
Bryan v. Itasca County, 426 U.S. 373 (1976)	15
Dalehite v. United States 346 U.S. 15 (1953)	21, 22
Daniels, et al., v. Andrus, et al., No. C-74-1061 WTS (N. Dist. Calif., Aug. 4, 1978)	5, 14, 16, 18
Duncan, et al., v. Andrus et al., No. C-71-1572 WWS (N. Dist. Calif. March 21, 1977)	5, 16, 18
Duncan, et al., v. U.S.A., 597 F.2d 1337 (Ct. Cl. 1979)	5
Eastport Steamship Corp v. United States, 372 F.2d 1002 (Ct. Cl., 1967)	20, 21
Foster v. United States 98 F. Supp. 349 (Ct. Cl., 1951)	23
International Engineering Co. v. Richardson, 512 F.2d 573 (D.C. Cir. 1975)	22
Jacobson v. Tahoe Regional Planning Agency, 558 F.2d 928 (9th Cir., 1977)	23
James v. Ambrose, 367 F. Supp. 1321 (D.V.I., 1973)	24

CASES	Page
Jentry v. U.S., 73 F. Supp. 899 (S.D. Cal. 1974)	24
Kelly v. Department of the Interior, 339 F. Supp. 1095 (E.D. Cal. 1972)	11
Knight, et al., v. Kleppe, et al., Nos. C-74-0005 WTS and C-73-0334 WTS (N. Dist. Calif., Feb. 20, 1976)	14
Konecny v. United States, 388 F.2d 59 (8th Cir., 1967)	22
Mason v. United States, 461 F.2d 1364, rev'd on other grounds, 412 U.S. 391 (1973)	26, 27
McMichael v. U.S., 63 F. Supp. 598 (N.D. Ala., 1945)	24
National State Bank of Newark v. U.S., 357 F.2d 704 (Ct. Cl., 1966)	23, 24
Nelson v. U.S., 341 F. Supp. 1353 (D. Mont., 1972)	24
Pasha v. U.S., 484 F.2d 630 (7th Cir., 1973)	22
Porter v. U.S., 496 F.2d 583 (Ct. Cl., 1974)	23
Smith v. U.S.A., No. C-74-1016 WTS (N. Dist. Calif., 1979)	5, 16, 19

CASES — Page

Soriano v. U.S., 352 U.S. 270 (1957) — 21

South Puerto Rico Sugar Co., Trading Corp. v. U.S., 334 F.2d 622 (Ct. Cl., 1964) — 23

United States v. Bursey, 515 F.2d 1228 (5th Cir., 1975) — 22

U.S. v. Sherwood, 312 U.S. 584 (1941) — 21

United States v. Testan, 424 U.S. 392 (1976) — 20, 21

U.S. v. Thurber, 376 F. Supp. 670 (D. Vt., 1974) — 25

Upper Lake Pomo Ass'n. v. Andrus, et al., No. C-75-0181 SW (N. Dist. Calif., Motion for Partial Summary Judgment granted Aug. 15, 1979) — 16, 19

Vigil v. U.S., 293 F. Supp. 1176 (D. Colo., 1968) — 24

STATUTES

Act of August 18, 1958 (Rancheria Act) Pub. L. No. 85-671, 72 Stat. 619 et seq., as amended by the Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390 — 3, 4, 6, 7, 8, 9, 10, 11, 12

28 U.S.C. §1491 — 20, 26

42 U.S.C. §2004 — 9, 12

Page

REGULATIONS

25 C.F.R. Part 242 (1959 and as amended, 1965) — 3, 11

OTHER AUTHORITIES

Hearings on H.R. 2576, H.R. 2824, H.R. 2838, H.R. 6364, House Interior Subcommittee on Indian Affairs, 85th Cong., 1st Sess., ser. 13 (1957) — 5

Schwartz & Jacoby, Litigation with the Federal Government, American Law Institute, 1970, at p. 140 — 25

Wright & Miller, Federal Practice and Procedure, Vol. 14, p. 202, §3656 (1976) — 25

QUESTION PRESENTED

The Petition presents the question of whether Indians of the Robinson Rancheria may sue the United States under the Tucker Act, 28 U.S.C. §§1346 and 1491, for money damages sustained by reason of breaches by the United States of trust and statutory obligations in the implementation of the California Rancheria Act on the Robinson Rancheria.

By its Petition, the United States also would present to the Court the question of whether, assuming that the United States is answerable in money damages for breaches of its trust obligations under the California Rancheria Act, damages may be awarded for injuries not proximately caused by breaches of trust and statutory obligations.

However, because the Court of Claims has not yet actually awarded any damages in this case, and has not yet authorized recovery of damages for any injuries which cannot be characterized as proximately caused by the breaches of trust and statutory obligations already adjudged to have occurred, Respondents contend that the question of what kinds of injuries may be

compensable under the circumstances of this case is not yet presented to the Court.

FEDERAL LAWS INVOLVED

1. 28 U.S.C. §1491;
2. The California Rancheria Act, P.L. 85-671, 72 Stat. 619-620, August 18, 1958, as amended by P.L. 88-419, 78 Stat. 390, August 11, 1964,
2. 25 C.F.R. Part 242 (1959 and as amended in 1965).

The texts of the relevant protions of these laws are set forth in the Appendix hereto. The texts of the original and amended Rancheria Acts, and the original and amended Rancheria Act Regulations, are set forth in parallel form for ease of comparison.

STATEMENT OF THE CASE

By Passage of the Act of August 18, 1958, P.L. No. 85-671, 72 Stat. 619 (hereinafter the Rancheria Act), Congress authorized the termination of the trust status of the lands and Indian status of the people of 41 named Rancherias (small Indian reservations) in California. Passage of the Rancheria Act represented the culmination of more than a decade of federal efforts to effect the assimilation of the Indian people of California into the surrounding non-Indian society. 1/

Because living conditions on California Rancherias generally were extremely substandard in comparison to conditions prevailing in adjacent non-Indian communities, and because Rancheria Indians generally were less educated than their non-Indian neighbors, the Rancheria Act expressly provided that Indians choosing to accept termination of the trust status

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1/ These "efforts" had consisted, in large measure, of the continual reduction in Bureau of Indian Affairs (B.I.A.) services to California Indians, and B.I.A. conduct which was intended to and did in fact create in the Indian community the impression that only by accepting termination would any services be obtained.

of their Rancheria lands and their personal status as Indians would, under the act, receive in return, prior to termination taking effect, fee title to their lands, water, sanitation and other improvements necessary to enjoy and utilize their lands and vocational training and educational assistance necessary to successfully function in non-Indian society. Mabel Duncan, et al, v. Andrus, et al., No. C-71-1572 WWS (N. Dist. Calif., March 21, 1977); Duncan, et al., v. U.S.A., 597 F.2d 1337 (Ct. Cl. 1979); Daniels, et al., v. Andrus, No. C-74-1061 WTS (No. Dist. Calif., Aug. 4, 1978); Smith v. U.S.A., No. C-74-1016 WTS (No. Dist. Calif., 1979); See also, Hearings on H.R. 2576, H.R. 2824, H.R. 2838, H.R. 6364, House Interior Subcommittee on Indian Affairs, 85th Cong., 1st Sess., ser. 13 (1957). To provide the services and improvments which the Act mandated must be provided prior to lawful termination under the Rancheria Act, Congress

authorized the appropriation of $509,235.[2/]

Under the 1958 Rancheria Act, the termination process was to be initiated with the preparation, by the Secretary of the Interior or by the Indians of a Rancheria, of a plan for the distribution of the Rancheria's assets (hereinafter "distribution plan"). The distribution plan was to provide for not only the distribution and/or disposition of a Rancheria's assets, but also identification of the persons entitled to share in the Rancheria's assets. Rancheria Act §2(a). [3/]

2/ However, unknown to California Indians, Congress never actually appropriated any such funds, because the B.I.A. never requested that any funds be appropriated. Apparently, the B.I.A. secretly had represented to members of Congress that no such funds would be sought, and that the provisions of the Rancheria Act would be carried out within the regular B.I.A. budget--the same budget which had been inadequate to provide these same services for nearly a decade! Deposition of Leonard Hill, former Director of the B.I.A. Sacramento Area Office; Exhibit 4 to Respondents' motion for summary judgment in the Court of Claims.

3/ The 1964 amendment to §2(a) directs that a distribution plan be prepared only when the Indians of a Rancheria request that the Rancheria's assets be distributed.

Once the distribution plan had been prepared, the plan was to be approved by the Secretary of the Interior, and thereafter was to be submitted to a referendum by the adult Indian participants in the proposed distribution. If, by referendum, the Indians approved the plan, the plan was to be carried out. Rancheria Act §2(b).

Real property distributed under the Act was to be conveyed in unrestricted fee title [Rancheria Act, §2(c)], and no property distributed under the provisions of the Act was at the time of distribution to be subject to any Federal or State income tax. Following distribution, such property would be subject to the same taxes, State and Federal, as in the case of non-Indians. Rancheria Act, §2(d).

§3 of the 1958 Rancheria Act provided as follows:

> §3 Before making the conveyances authorized by this Act on any Rancheria or reservation, the Secretary of the Interior is directed:
>
> §3(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyances of marketable and recordable titles to the lands.

> §3(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.
>
> §3(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

In 1964, §3(c) was amended to read as follows:

> To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, together with necessary appurtenances and fixtures) and

irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United States; Provided, That with respect to sanitation facilities, as hereinbefore described, the function specified in this paragraph, including agreements with Indians with respect to such facilities, shall be performed by the Secretary of Health, Education, and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. 2004a).

§10(b) of the 1958 Rancheria Act provided as follows:

> After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

In 1964, §10(b) was amended as follows:

> After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families <u>who are not members of any other tribe or band of Indians</u>, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, <u>all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated</u>, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States. <u>The provisions of this subsection, as amended, shall apply in the case of a distribution of assets made either before or after the amendment of the subsection</u>.

[Emphasis added].

Upon approval of a distribution plan by the Indians of a Rancheria, the constitution and charter of the Rancheria's tribal government were to be revoked. [Rancheria Act, §11].

§12 of the Rancheria Act authorized the Secretary of the Interior to issue such rules and regulations as he deemed necessary to carry out the provisions of the Act. Pursuant to this section, the Secretary adopted 25 C.F.R. Part 242 in 1959. Following the 1964 amendments to the Rancheria Act, the Secretary amended those Regulations in 1965; however, the 1965 amendments were invalidated by a three-judge district court in Kelly v. Department of the Interior, 339 F. Supp. 1095 (E.D. Calif., 1972).

The Robinson Rancheria, in Lake County, California was one of the 41 Rancherias which were named in the 1958 Rancheria Act as authorized for termination. The Robinson Rancheria distribution plan was approved by the Indians of the Rancheria on February 25, 1960, and the assets of the Rancheria were distributed between 1961 and 1963.

For many years prior to the approval of the Robinson Rancheria distribution plan, the people of the Rancheria had lacked adequate water, sanitation and irrigation facilities, decent housing and other basic amenities of modern life. Although §3 of

the Rancheria Act required the Secretary of the Interior (and under the 1964 amendments to the Act, the Secretary of Health, Education and Welfare) to provide such water and sanitation facilities and other improvements as the Secretary and the Indians might agree upon, no separate agreement for such improvements was negotiated under the Rancheria Act. Rather, the distribution plan recited the Indians' "request" that the inadequate existing water system be extended to (but not into) any home at least 50% completed within 90 days after approval of the plan.

In 1965, the Secretary of H.E.W. agreed under 42 U.S.C. §2004 (rather than under the Rancheria Act) to provide certain sanitation facilities for most of the then-existing houses on the Rancheria. However, no additional water supplies were developed to provide the additional water needed to operate the new facilities, and many of the facilities were defective or otherwise inadequate.

§3(a) of the Rancheria Act required the Secretary of the Interior to convey "marektable and recordable titles" to Rancheria lands. §5(b) of the Act includes

among the assets of the Robinson Rancheria to be conveyed to the Indians thereof one half of a 160-acre woodlot. Although the Secretary of the Interior conveyed to the Indians of the Robinson Rancheria fee title to their 80-acre woodlot, the Indians did not receive deeded access to the property, and their title thus was not marketable. See, e.g., Calif. Gov't. Code §66410, et seq.

As soon as the lands of the Robinson Rancheria were distributed among the Indians thereof, the lands were taxed by Lake County, a subdivision of the State of California. Robinson Rancheria Indians receiving public assistance were required to give liens on their lands, and to utilize or sell their lands in order to maintain their eligibility for public assistance. Also, the lands became subject to execution by judgment creditors.

At the same time as the lands of the Rancheria lost federal trust status, the Indian people of the Robinson Rancheria (distributees and dependent members of their families) lost their status as Indians under the laws of the United States, and thus became ineligible to receive any federal benefits provided to Indians because

of their status as Indians. 4/ Thus, these people were denied such B.I.A. services as medical care, housing and educational assistance, preference in hiring, etc.

In 1971, the people of the Rancheria sued the United States and its officers, seeking injunctive and declaratory relief in the district court and, eventually, money damages in the Court of Claims.

The district court in Duncan v. Andrus, supra, held that the trust relationship between the United States and the Indians of a Rancheria named in the Rancheria Act was intended by Congress to continue unless and until a distribution plan had been promulgated and fully implemented "pursuant to" the Rancheria Act, and thus that the language of the Act itself, as well as the conduct of the Secretary of the Interior in promulgating and implementing the Rancheria Act, must be evaluated

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4/ In Knight, et al., v. Kleppe, et al., Nos. C-74-0005 WTS, and C-73-0334 WTS, N.D. Calif., Feb. 20, 1976, the court "unterminated" all persons listed as dependents, on the ground that the procedures under which such persons were listed as dependents deprived them of their right to due process of law.

in the context of the trust relationship.

The district court held that within the context of the trust relationship, the only construction of the Rancheria Act consistent with the federal canon of statutory construction that ambiguities in enactments involving Indians are to be resolved in a manner favorable to the Indians [Bryan v. Itasca County, 426 U.S. 373 (1976)], is that §3 of the Rancheria Act requires the Secretary of the Interior to agree to provide such water, sanitation and other improvements as are reasonably adequate to the needs of the Indians; that the provision of such services or improvements must precede the distribution of a Rancheria's assets; that a distribution of a Rancheria's assets which occurs prior to provision of the mandated services is not made "pursuant to" the Rancheria Act, and that such a distribution does not lawfully terminate either the trust status of the lands or the Indian status of the people of a Rancheria. Moreover, the district court held that both the Secretary's approval of a distribution plan for the Robinson Rancheria which failed to assure the provision of adequate water and

sanitation facilities for the Rancheria, and the distribution of the Rancheria's assets prior to the provision of mandated improvements or services constituted breaches of the trust and statutory obligations of the United States, thus rendering the purported termination of the trust status of the people of the Robinson Rancheria unlawful.

The decision of the district court in Duncan, et al., v. Andrus, et al., supra, has been followed by other district courts in Smith v. U.S.A., supra, Daniels v. Andrus, supra, and Upper Lake Pomo Association v. Andrus, No. C-75-0181 SW (N.D. Calif.) (Motion for Partial Summary Judgment granted, Aug. 15, 1979). Indeed, in Smith v. U.S.A., partial summary judgment holding the United States liable in damages for the sale of Rancheria land for nonpayment of taxes was granted prior to the decision of the Court of Claims which the United States would have this Court review; final judgment awarding money damages to the plaintiff in Smith v. U.S.A., id., was entered on July 2, 1979, and the United States has not appealed that decision.

In this case, the Court of Claims concurred with the holding of the district court that the termination of the lands

and Indian status of the people of the Robinson Rancheria had not occurred "pursuant to" the Rancheria Act, and thus that the termination had been unlawful. The Court of Claims held that the United States had breached the fiduciary obligations owed to the people of the Rancheria under the Rancheria Act; that the statutory context in which the Secretary of the Interior breached the trust obligations owed to the Indians of the Robinson Rancheria can fairly be interpreted as mandating compensation for damages sustained by reason of breaches of trust, and thus that, under the Tucker Act, the United States is liable in money damages for injuries sustained by Robinson Indians as the direct result of such breaches of trust.

REASON FOR DENYING THE PETITION

The United States would have this Court grant the Petition on the grounds that the decision of the Court of Claims erroneously found that a trust relationship existed between the United States and the Indians of the Robinson Rancheria; and that the Court of Claims has jurisdiction of an action for damages under the Tucker Act for breaches of the fiduciary obligations of the United States in the course of implementing the Rancheria Act. Moreover, the United States contends that the Court of Claims impermissibly broadened the range of damages recoverable for breach of trust. An examination of these alleged grounds demonstrates that they are without merit, and thus that no reason exists to grant the Petition.

The Court of Claims' finding of the existence of a trust relationship between the United States and the Indians of the Robinson Rancheria was based, in the first instance, upon a final judgment of the district court in Duncan v. Andrus, supra; not only did the United States decline to appeal the judgment, but also the United States had conceded the existence of such a relationship.

597 F.2d at 1342. The United States has made similar concessions in Daniels v. Andrus, supra, and Smith v. U.S.A., supra, (Hopland Rancheria), and Upper Lake Pomo Ass'n. v. Andrus, supra (Upper Lake Rancheria).

However, the Court of Claims did not simply accept the district court's finding of the existence of a trust relationship; rather, the Court of Claims independently reached the same conclusion, holding that a trust relationship had been created by the statutes under which the Robinson Rancheria had been established, more than 50 years of administrative actions and interpretations by the Department of the Interior and the subsequent recognition of a trust relationship in the Rancheria Act itself. Thus, the suggestion by the United States that the Court of Claims found the existence of a trust relationship absent a basis in statute simply is not correct.

Contrary to the suggestion of the United States (at p. 13 of the Petition), the Court of Claims' premise that, "this court has jurisdiction to award certain types damages for breach of trust,"

597 F.2d at 1341 is not contrary to fundamental principles of sovereign immunity as set forth in United States v. Testan, 424 U.S. 392 (1976), of which the Court of Claims was acutely aware (497 F.2d at 1341).

Testan, when reduced to its essence, did not change the test of whether a particular claim for damages against the United States may be maintained under the Tucker Act. Rather, Testan reaffirmed the test articulated by the Court of Claims in Eastport Steamship Corp. v. United States, 372 F.2d 1002 (Ct. Cl., 1967):

> "It follows that the asserted entitlement for money damages depends upon whether any federal statute can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." Eastport S.S. Corp. v. United States, 178 Ct. Cl. at 607, 372 F.2d at 1009. . ." [424 U.S. at 400].

In practical effect, Testan holds that if a federal law confers a substantive right to recover damages against the United States, the Tucker Act will supply the necessary waiver of sovereign immunity; i.e., the law creating the right (expressly or impliedly) need not also expressly waive sovereign immunity.

Testan's citation of Eastport demonstrates that this is indeed the case. To dispel any lingering doubts on this point, Respondents would refer the Court to language in a consistent line of decision from the Supreme Court:

> "Nor with due regard to the words of §2 of the Tucker Act and to its legislative history can we say that the United States has consented to the maintenance of suits against the Government in the district courts which could not be maintained in the Court of Claims. The section must be interpreted in the light of its function in giving consent of the Government to be sued, which consent, since it is a relinquishment of a sovereign immunity, must be strictly interpreted."
> U.S. v. Sherwood, 312 U.S. 584, 590 (1941).

> ". . .the Congress in the Act creating the Court of Claims [Act of February 24, 1855, 10 Stat. 612] gave the Government's consent to be sued therein in certain classes of claims. . ."
> Soriano v. U.S., 352 U.S. 270, 273 (1957);

> "In 1855, Congress established the court of Claims and consented to suit therein on claims based on contract or federal law or regulation. This consent was enlarged in 1887 to include all cases for

> damages not sounding in tort."
> Dalehite v. U.S., 346 U.S. 15, 26, n. 10 (1953);

from the Court of Appeals:

> ". . . for contract actions against the United States, Congress, through passage of the Tucker Act, 28 U.S.C. §§1346 (a)(2), 1491, (1970), has consented to suit."
> International Engineering Co. v. Richardson, 512 F.2d 573, 577 (D.C. Cir., 1975).

> ". . . the Tucker Act's waiver [of sovereign immunity] is not conditioned upon the procedural context in which it is sought."
> United States v. Bursey, 515 F.2d 1228, 1234 (5th Cir., 1975).

> "Congress has given the consent to sue the United States in the Tucker Act. . ."
> Pasha v. U.S., 484 F.2d 630, 633 (7th Cir., 1973);

> "The United States Congress has with respect to the Federal Tort Claims Act and the Tucker Act defined the terms and conditions under which the United States has waived immunity to suit. . ."
> Konecny v. U.S., 388 F.2d 59, 62 (8th Cir., 1967);

"Congress, in enacting the Tucker Act (see 28 U.S.C. §§1346 and 1491), which waived sovereign immunity for certain claims, provided for jurisdiction in the federal district court or the United States Court of Claims, but it did not subject the United States to suit in a state court.
Jacobson v. Tahoe Regional Planning Agency, 558 F.2d 928, 940 (9th Cir., 1977);

from the Court of Claims:

"[The Tucker Act is the] statute by which the Government waives its sovereign immunity from suit in certain situations. . ."
Foster v. U.S., 98 F.Supp. 349, 351 (Ct. Cl., 1951);

". . . nor need there be any specific consent-to-suit apart from the Tucker Act. . ."
South Puerto Rico Sugar Co. Trading Corp. v. U.S., 334 F.2d 622, 626 (Ct. Cl., 1964);

"In our general jurisdictional statute, 28 U.S.C. §1491. . ., Congress has waived the immunity of the United States. . ."
Porter v. U.S., 496 F.2d 583, 586 (Ct. Cl., 1974);

"In chapter 91 of 28 U.S.C. §§1491-1506, Congress has waived the immunity of the United States in many classes of actions The Tucker Act, 28 U.S.C. §1491, is the waiver provision relied upon here."

National State Bank of Newark v. U.S., 357 F.2d 704, 706 (Ct. Cl., 1966);

from the district courts:

"The Tucker Act contains the government's consent to be sued in any civil action founded upon the Constitution or upon any express or implied contract with the United States."
Nelson v. U.S., 341 F. Supp. 1353, 1354 (D. Mont., 1972);

"The Tucker Act was intended to waive the doctrine of sovereign immunity in limited conditions."
Vigil v. U.S., 293 F. Supp. 1176, 1184 (D. Colo., 1968);

"The United States of America, as sovereign, consents to be sued when the nature of the claim and the circumstances of suit are such as fall within the provisions of the Tucker Act. . ."
Jentry v. U.S., 73 F. Supp. 899, 901 (S.D. Cal. 1974);

"The Tucker Act consititues a waiver of governmental immunity to suit . . ."
McMichael v. U.S., 63 F. Supp. 598, 599 (N.D. Ala., 1945);

"The consent of the United States to be sued under the Tucker Act is limited to suits for recovery of money judgment."
James v. Ambrose, 367 F. Supp. 1321, 1327 n. 4 (D.V.I., 1973);

"Ordinarily the United States of America may waive its sovereign immunity (1) by statutory consent, usually by operation of the Tucker Act. . ."

U.S. v. Thurber, 376 F. Supp. 670, 673 (D. Vt., 1974).

and from prominent scholars:

"Probably the two best-known exceptions to the sovereign immunity doctrine are the Tucker Act and the Federal Tort Claims Act."

Wright & Miller, Federal Practice and Procedure, Vol. 14, p. 202, §3656 (1976).

"Congressional waiver of the sovereign immunity and grant of consent to be sued, at least in the Tucker Act, must be strictly construed."

Schwartz & Jacoby, Litigation With The Federal Government, American Law Institute, 1970, at p. 140.

The decision of the Court of Claims in this case found that a trust relationship existed between the United States and the Indians of the Robinson Rancheria; that the trust relationship was founded both in statutes and a long history of Department of the Interior policies and practices; that the Rancheria Act conferred upon the Indians of the Rancheria certain rights which the United States denied to the

Indians in violation of both the Rancheria Act and its trust obligations to said Indians thereunder; and that the existence of the trust relationship and the specific obligations imposed by the Rancheria Act could fairly be interpreted as mandating compensation for damages suffered as a result of breaches of federal statutory and trust obligations.

In so holding, the Court of Claims was acting under the same jurisdictional premise as it did in Mason v. United States, 461 F.2d 1364 (1972), reversed on other grounds, 412 U.S. 391 (1973), when it characterized an Indian claim for damages against the United States for breach of trust,

"as a claim upon an Act of Congress and for damages in cases not sounding in tort,"

The Supreme Court reversed the Court of Claims in Mason, but not because the Court of Claims lacked jurisdiction to entertain the action. Rather, the Court expressly noted that the action had been brought under 28 U.S.C. §1491, and proceeded directly to consideration of the only issue before the court:

> "The issue in these cases is whether a trustee in the course of administering its fiduciary obligations is entitled to rely on a directly relevant decision of this Court which has neither been overruled nor questioned." [412 U.S. at 391-392; see also, footnote 5, 412 U.S. at 394].

Had there been any question as to the jurisdiction of the Court of Claims under the Tucker Act to hear a damage claim for breach of trust, that issue certainly would have been raised, either by the government or by the Court; it was not.

Although the Court in Mason held that there had been no breach of trust under the circumstances of that case, and thus reversed the decision of the Court of Claims on that basis, the Court articulated a standard of conduct and measure of liability governing the actions of the United States in its fiduciary capacity which has not been altered:

> "There is no doubt that the United States serves in a fiduciary capacity with respect to these Indians and that, as such, it is duty bound to exercise great care in administering its trust . . . A trustee is under a duty in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property . . . if the trust property is lost or diminished in value, the trustee

> is not subject to a surcharge unless he failed to exercise the required care and skill." [412 U.S. at 398].

Respondents herein urge that the decision of the Court of Claims is the only result consistent with the language and intent of the Rancheria Act, justice and the national honor; this does not overstate the case. The stark, unavoidable and uncontested fact is that the Indians of the Robinson Rancheria were induced by their trustee to surrender their vested statutory rights and status as Indians in what was to be a bargained-for exchange for improvements and services which were essential to the attainment of minimally decent living standards in their own community; those services and improvements never were received.

The people of the Robinson Rancheria unlawfully lost their valuable rights and status as Indians and the unique trust status of their property (and, in most cases, the property itself). They received nothing in return. Amply backed by federal statutes and case law, the Court of Claims has exercised its Tucker Act jurisdiction to hold the United States liable to the Indians

of the Robinson Rancheria for damages proximately related to the unlawful termination of the trust status of the lands and the Indian status of the people of the Robinson Rancheria. There is no just reason to prevent their case from proceeding to adjudication on the issue of damages.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 15, 1979

By: _____
GEORGE FORMAN

Appendix A

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

Nothing herein shall be construed to give the Court of Claims jurisdiction in suits against, or founded on actions of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended, with respect to suits by or against the Authority.

As amended Nov. 1, 1978, Pub.L. 95-563, § 14(i), 92 Stat. 2391.

Appendix B

THE CALIFORNIA RANCHERIA ACT.

The Act of August 18, 1958, P.L. 85-671, 72 Stat. 619-62].

The 1958 Rancheria Act, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390-391.

1958 Act

AN ACT

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

§1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

Amended [1964] Act

AN ACT

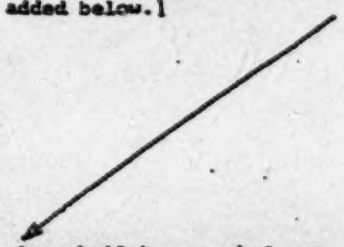
To amend the Act entitled "an Act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes", approved August 18, 1958 (72 Stat. 615).

§1

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the lands, including minerals, water rights and improvements located on the lands, and other assets of the following rancherias and reservations lying wholly within in the State of California shall be distributed in accordance with the provisions of this Act: ~~Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Noorestown, Nevada City, North Fork, Paskenta Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Table Bluff, Table Mountain, Upper Lake, Wilton,~~ when such distribution is requested by a majority vote of the adult members of a rancheria or reservation or of the adult Indians who hold forma or informal assignments on the rancheria or reservation, as determined by the Secretary of the Interior. The requirement for a majority vote shall not apply to the rancherias and reservations that were at any time named in this section.

§2(a) ~~The Indians who held formal or informal assignments on each reservation or rancheria or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians;~~ When the Indians of a rancheria or reservation request a distribution of assets in accordance with the provisions of this Act, they, or the Secretary of the Interior after consultation with them shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common; Provided, That the provisions of this section with respect to a request for distribution of assets shall not apply in any case in which the requirement for such request is waived by section 1 of this Act, and in any such case the plan shall be prepared as though request therefor had been made. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

§2(2) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance as is necessary to organize a corporation or other legal entity for the purposes of this Act.

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for consideration of the Secretary. After such consideration, the plan or revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.	§2(b) [This section remains the same, except for the langu added below.]  plan shall be carried out: Pro vided, That the provisions of such plan may be modified wit the approval of the Secretary consent of the majority of the distributees. It is the inter of Congress that such plan sha be completed not more than th years after it is approved.
§2(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded in the appropriate county office.	§2(c) [Unchanged]
§2(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: Provided, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.	§2(d) [Unchanged]

§3 Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:	§3 Before making the conveya authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:
§3(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyances of marketable and recordable titles to the lands.	§3(a) [Unchanged]
§3(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.	§3(b) [Unchanged]
§3(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.	§3(c) [The original language was deleted and following substituted]: To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, drainage facilities and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures) and irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United State Provided, That with respect t sanitation facilities, as here inbefore described, the funct specified in this paragraph, including agreements with Ind with respect to such facilitie

[continued next page]

§3(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

§3(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

§4 Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

[§3(c), continued] shall be performed by the Secretary of Health, Education and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. 2004a).

§3(d) [Unchanged]

§3(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value. [The 1964 amendment strikes the word "non-Indian].

§4 [Unchanged]

1958 Act	1964 Amended Act
§5(a) The secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.	§5(a) [Unchanged]
§5(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the one-hundred-and-sixty-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.	§5(b) [Unchanged]
§5(c) The Secretary of the Interior is authorized to sell the five hundred and sixty acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928. (45 Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.	§5(c) [Unchanged]
*****	§5(d) [added by 5(g) of the 1964 Act]: Any rancheria or reservation lying wholly within the State of California that is held by the United States for the use of Indians of California and that was not occupied on January 1, 1964, by Indians under a formal or informal assignment shall be sold by the Secretary of the Interior and proceeds of the sale shall be posited in the Treasury of the United States to the credit of the Indians of California. Any rancheria or reservation lying wholly within the State of California that is held by the United States for a named tribe, band, or group that was not occupied on January 1, 1964, may be sold by the Secretary of the Interior and the proceeds shall be deposited to the credit of the tribe, band, or group.

§6. The Secretary of the Interior shall disburse to the Indians of the rancharias and reservations that are subject to this Act all funds of such Indians that are in the custody of the United States.	§6. [Unchanged]
§7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians subject to this Act to share in any judgment recovered against the United States on behalf of the Indians of California.	§7. [Unchanged]
§8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indains in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.	§8. [Unchanged]
§9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistance during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.	§9. [Unchanged]

§10(a). The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2(b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United States by an Indian who received or is denied a part of the asset distributed.	§10(a) [Unchanged]
§10(b). After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.	§10(b). After the assets of a rancheria or reservation have distributed pursuant to this A the Indians who receive any pa of such assets, and the depend members of their immediate fa who are not members of any oth tribe or band of Indians, shal not be entitled to any of the services performed by the Unit States for Indians because of their status as Indians, all r strictions and tax exemptions applicable to trust or restric land or interests therein owne by them are terminated, all statutes of the United States which affect Indians because c their status as Indians shall be inapplicable to them, and t law of the several States shal apply to them in the same manr as they apply to other citizer or persons within their juris- diction. Nothing in this Act, however, shall affect the stat of such persons as citizens of the United States. The pro- visions of this subsection, as amended, shall apply in the ca of a distribution of assets ma either before or after the ame ment of the subsection.

[New language is underscored

1958 Act	1964 Amended Act
§11. The constitution and corporate charter adopted pursuant to the Act of June 18,1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2(b) of this Act. [See 25 U.S.C. §§461-479].	§11. The constitution and corporate charter adopted pursuan to the Act of June 18, 1934 (48 Stat. 984), as amended, or any other authority, by any rancheria or reservation subje to this Act shall be revoked b the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2(b) of this Act.
§12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveyancing instruments as he deems necessary to carry ou the provisions of this Act.	§12. [Unchanged].
§13. There is authorized to be appropriated not to exceed $509,235 to carry out the provisions of this Act.	§13. There is authorized to b appropriated not to exceed $509,235 such sums as may be necessary to carry out the pro visions of this Act.
APPROVED: August 18, 1958.	APPROVED: August 11, 1964.

Appendix C

CALIFORNIA TERMINATION REGULATIONS

A. 1959 Regulations.	B. 1965 Regulations.
Source: Federal Register of June 9, 1959 at page 4652 ff. 24 F.R. 4652-4654.	Source: Federal Register of August 13, 1965, 30 F.R. 10099, et seq. NOTE: the 1965 regulations were held to be void by a three-judge District Court in Kelly v. U. S. Department of the Interior, 339 F. Supp. 1095 (E.D.Cal. 1972).
§242.1 Purpose and scope.	§242.1 Purpose and scope.
The purpose of this part is to provide policies and procedures governing the distribution of the assets of the following rancherias and reservations in the State of California: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Rumsey, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake and Wilton.	The purpose of this part is to provide policies and procedures governing distribution of the assets of rancherias and reservations lying wholly within the State of California.
§242.2 Definitions.	§242.2 Definitions.
§242.2 Definitions. As used in this part, terms shall have the meanings set forth in this section.	§242.2 Definitions. As used in this Part 242, terms shall have the meanings set forth in this section.
(a) "Adult Indian" means any Indian who is an adult under the laws of the State in which he is domiciled. (b) "Distributee" means any Indian who is entitled to receive, under a plan prepared pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), any assets of a rancheria or reservation.	(a) "Secretary" means the Secretary of the Interior or his authorized representative. (b) "Commissioner" means the Commissioner of Indian Affairs. (c) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, Sacramento, Calif., or his authorized representative. (d) "Adult Indian" means any Indian who is an adult under the laws of the State in which he is domiciled. (e) "Distributee" means any Indian who is entitled to receive any assets of a rancheria or reservation under a plan prepared and approved pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

§242.2 (cont.)

(c) "Dependent members", as used in the phrase "dependent members of their immediate families", includes all persons for whose support the distributee is legally liable according to the laws of the State of California and who are related by blood or adoption or by marriage, who are domiciled in the household of the distributee, and who receive more than one-half of their support from such distributee.

(d) "Formal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation which is evidenced by a document in writing.

(e) "Informal assignment" means any privilege or claim of privilege of use and/or occupancy of the real property of a rancheria or reservation, not based on an instrument in writing.

(§242.3 of the 1959 regulations relates to the formulation of distribution plans for the rancherias specifically named in §242.1. It corresponds to §242.4 of the 1965 amended regulations.)

§242.2 (cont.)

(f) "Dependent member," as used in the phrase "dependent members of their immediate families," means all persons of Indian descent not sharing directly in the distribution of rancheria or reservation assets who: (1) Are related to the distributee by blood or adoption or by marriage, including common law or Indian custom marriage; (2) are domiciled in the household of the distributee; (3) are not members of any other tribe or band of Indians; and (4) receive more than one-half of their support from such distributee or for whose support a distributee is legally liable according to the laws of the State in which he is domiciled.

(g) "Formal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation which is evidenced by an instrument in writing.

(h) "Informal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation, not based on an instrument in writing.

(i) "Organized rancheria or reservation" means any tribe, band, or community of Indians organized to conduct its affairs pursuant to an organic document containing membership criteria approved by the Secretary.

(j) "Unorganized rancheria or reservation" means any tribe, band, or community of Indians which does not have an organic document containing membership criteria approved by the Secretary.

§242.3 Requests for distribution.

§242.3 Requests for distribution.

(a) *Unorganized rancheria or reservation.* Upon receipt of a written request from an adult Indian or Indians of an unorganized rancheria or reservation for the distribution of the assets of the rancheria or reservation, the Director shall prepare a list of Indians in the following categories:

(1) Those who have allotments on the rancheria or reservation;

(2) Those who hold formal assignments;

(3) Those who reside on the rancheria or reservation pursuant to an informal assignment;

(4) Those not in the above categories who have resided for a period of at least three consecutive years immediately preceding receipt of the request as provided for in the introductory text of this paragraph, on the rancheria or reservation not set aside for a designated group of Indians.

§242.3 (cont.)

(3) The dependent members of the immediate families of those persons in subparagraphs (1), (2), (3), and (4) of this paragraph.

(b) *Organized rancheria or reservation.* Upon a formal request from the official governing body of the rancheria or reservation, the Director shall prepare a list of the members of such organized group in accordance with the criteria set forth in the approved organic document of the group.

(c) *Eligibility to participate.* The adults whose names appear on a list prepared in accordance with paragraph (a) or (b) of this section shall constitute those persons eligible to vote on the issue of whether a distribution plan is to be developed. A list shall not include the name of any person who is a member of any Indian tribe, band, or community other than the one associated with the rancheria or reservation which has requested the distribution program.

(d) When the Director is satisfied that the list is complete, he shall publish it once weekly for 3 successive weeks in a local newspaper. Within 15 days after the date of the last publication of the list, anyone may protest in writing the omission of a name from the list or the inclusion of any name thereon. His written protest together with arguments to sustain it shall be presented to the Director who will render his decision, which shall be final. After all protests have been heard and have been duly disposed of, the Director shall hold an election on whether the distribution of rancheria or reservation assets shall be made. Except as otherwise provided in section 1 of the Act of August 12, 1958, as amended,[1] if a majority of the eligible voters vote for distribution, a distribution plan shall be prepared in accordance with the applicable portions of this Part 242.

[1] Sec. 1 of the Act of August 18, 1958 (72 Stat. 619), as amended makes mandatory the distribution of the land and assets of the following rancherias and reservations: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Grinda, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Pauma, Pinoleville, Powersville, Potter Valley, Quartz Valley, Rancho, Redwood Valley, Robinson, Rohnerville, Rumsey, Sanila Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

1959 Regulations

§242.3 Plan of distribution.

§ 242.3 Plan of distribution.

The plan of distribution to be prepared under section 2 of the Rancheria Act shall be in writing and may be prepared by those Indians who lived formal or informal assignments on the rancheria or reservation involved, or by those Indians who have or claim to have some special relationship to the particular rancheria or reservation involved, not allowed by Indians in general, or may be prepared by the Secretary of the Interior after consultation with such Indians. Any such plan must be approved by the Secretary before submission to the distributees for approval. Such plan shall provide for a description of the class of persons who shall be entitled to participate in the distribution of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and the dependent members of their immediate family.

§242.4 General notice.

§ 242.4 General notice.

When the Secretary has approved a plan for the distribution of the assets of a rancheria or reservation, a general notice of the contents of such plan shall be given in the following manner:

(a) Service by regular mail, or in person, of a copy of the plan to those who participated in the drafting of the plan, and to the distributees named in the plan.

(b) Service by regular mail, or in person, of a copy of the plan to all other persons who have indicated by a letter addressed to the Area Director that they claim an interest in the assets of the rancheria or reservation involved.

(c) Posting a copy of the plan in a public place on the rancheria or reservation, and in the Post Office serving the rancheria or reservation.

1965 regulations

§242.4 Plan of distribution.

§ 242.4 Plan of distribution.

(a) The plan of distribution provided for in section 2 of the Act of August 18, 1958, as amended, shall be in writing and may be prepared by:

(1) Those adult Indians whose names appear on the final list as provided for in § 242.3; or

(2) By the governing body in the case of an organized rancheria or reservation; or

(3) By the Secretary of the Interior after consultation with such Indians.

(b) The primary source of distributees shall be those persons whose names appear on the list prepared in accordance with § 242.3. Additional names may be added to the list upon the approval of a majority of the adults included on the original list referred to above: *Provided*, That no new name shall be added without the approval of the individual and of the Director. In the event of a per capita distribution of any rancheria or reservation funds, all persons whose names appear on the final list prepared pursuant to § 242.3, and all persons whose names have been added thereto, shall be entitled to participate. Any distribution plan must be approved by the Secretary before it is submitted to the adult distributees for approval. Such plan shall provide for a description of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and the dependent member of their immediate families: *Provided*, That for the purpose of this section, any person who is a member of any other tribe or band of Indians shall not be considered a dependent member of a distributee's immediate family.

§242.5 General notice.

§ 242.5 General notice.

When the Secretary has approved a plan for the distribution of the assets of a rancheria or reservation, notice of the contents of such plan shall be given in the following manner:

(a) A copy of the plan shall be delivered in person or mailed to the last known address of those who participated in the drafting of the plan and the distributees named in the plan.

(b) A copy of the plan shall be delivered in person or mailed to the last known address of all other persons who have indicated by a letter addressed to the Director that they claim an interest in the assets of the rancheria or reservation involved.

(c) Posting a copy of the plan in a public place on the rancheria or reservation and in the post office serving the rancheria or reservation.

(d) Publication of the general contents of the plan once weekly for three successive weeks in one or more local newspapers.

1959 Regulations

§242.5 Objections to plan.

§ 242.5 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the property of a rancheria or reservation as set forth in a plan prepared and approved under § 242.3 may, within 30 days after the date of the general notice, submit his views and arguments in writing to the Area Director, Bureau of Indian Affairs, P.O. Box 749, Sacramento, California. The Area Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the property. Such views and arguments shall be promptly forwarded by the Area Director for consideration by the Secretary.

§242.6 Referendum

§ 242.6 Referendum.

After consideration by the Secretary of all views and arguments, the plan or a revision thereof, and a notice of a referendum meeting, shall be sent by registered mail, return receipt requested, to each distributee. Thereafter, the Secretary shall cause a referendum to be held at a general meeting of the distributees, at the time and place set forth in the notice of the meeting. Any adult Indian distributee may indicate his acceptance or rejection of the plan by depositing his ballot in a ballot box at the meeting place or by mailing his ballot to the Area Director, Bureau of Indian Affairs, P.O. Box 749, Sacramento, California, clearly marked on the envelope the rancheria or reservation referendum for which the ballot is being submitted. All ballots which are mailed shall be posted so as to be received at least two days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted; and if the plan is approved by a majority of the adult Indian distributees, it shall be final and shall take effect on the date approved.

1965 Regulations

§242.6 Objections to plan.

[The 1965 regulations here remain substantially unchanged from the corresponding provisions in the 1959 regulations.]

§ 242.6 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the assets of a rancheria or reservation as set forth in a plan prepared and approved in accordance with the provisions of this part 242 may, within thirty (30) days after the date of last publication under § 242.5(d), submit his views and arguments in writing to the Director. The Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the assets. Such views and arguments shall be promptly forwarded by the Director for consideration by the Secretary.

§242.7 Referendum.

§ 242.7 Referendum.

After consideration by the Secretary of all views and arguments, a copy of the plan or a revision thereof and a notice of a referendum meeting shall be sent by certified mail, return receipt requested, to each distributee. Thereafter, the Secretary shall cause a referendum to be held at a general meeting of the distributees, at the time and place set forth in the notice of the meeting. Each adult Indian distributee may indicate acceptance or rejection of the plan by depositing his or her ballot in a ballot box at the meeting place or by mailing his or her ballot to the Director, in which case the envelope shall be clearly marked to identify the rancheria or reservation referendum for which the ballot is being submitted. All ballots which are mailed must be received by the Director at least 2 days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted and if the plan is approved by a majority vote of the adult Indian distributees, it shall be effective on the date approved. Subject to modification as provided in § 242.8 the plan shall thereupon be put into effect and its provisions carried out as expeditiously as possible, including distribution of assets as therein provided.

1959 Regulations

There are no provisions in the 1959 regulations which correspond to §242.8 of the 1965 regulations.

§242.7 Beneficial interest.

§ 242.7 Beneficial interest.

Upon approval of a plan or a revision thereof by the Secretary of the Interior, and acceptance by a majority of the adult Indian distributees, the distribution listed in the plan shall be the final list of Indians entitled to participate in the distribution of the assets of the rancheria or reservation and the rights or beneficial interests in the property of each person whose name appears on this list shall constitute vested property which may be inherited or bequeathed but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such property.

§242.8 Organized rancheria or reservation.

§ 242.8 Organized rancheria or reservation.

When a plan for the distribution of the assets of a rancheria or reservation organized under section 16 of the Indian Reorganization Act (25 U.S.C. 476) shall have been approved and adopted at a referendum held for the purpose, the governing body of such constitutional rancheria or reservation shall cause a final financial statement to be prepared, including a certificate that all the obligations and debts of said rancheria or reservation have been liquidated or adjusted and that all the assets have been or are simultaneously therewith conveyed to persons or groups authorized by law to receive them which may include any organization under State law. The constitution of the group shall upon receipt of a satisfactory certificate of completion be revoked by the Secretary.

1965 Regulations

§242.8 Modification of plan.

§ 242.8 Modification of plan.

If after approval by the Secretary and the adult distributees it is determined by an appropriate resolution approved by a majority of the adult distributees that a plan of distribution is not in conformity with the wishes of the proposed distributees or that it contemplates acts or actions determined to be undesirable and if modification of the plan of distribution is required to correct the circumstances, such resolution shall be submitted to the Secretary for approval. Approval of the resolution by the Secretary shall be final and the plan of distribution shall be considered modified as of the date of such approval.

§242.9 Beneficial interest.

§ 242.9 Beneficial interest.

Upon approval of a plan, revision, or modification thereof by the Secretary and acceptance by a majority of the adult distributees, the distributees listed in the plan, revision, or modification shall be the final list of Indians entitled to participate in the distribution of the assets of the rancheria or reservation, and the rights or beneficial interests of each person whose name appears on this list may be inherited or bequeathed, but shall not otherwise be subject to assignment, alienation or encumbrance before the transfer by the United States of full legal title to such assets, except with the approval of the Secretary.

§242.10 Organized rancheria or reservation.

§ 242.10 Organized rancheria or reservation.

When a plan for the distribution of the assets of an organized rancheria or reservation has been approved and adopted at a referendum held for that purpose, the governing body of such rancheria or reservation shall cause a final financial statement to be prepared including a certificate that all obligations and debts of said rancheria or reservation have been liquidated or adjusted and that all the assets have been or are simultaneously therewith conveyed to persons, associations, corporations, or other groups authorized by law to receive them. Upon receipt of a satisfactory certificate of completion, the organization document and/or charter shall be revoked by the Secretary.

1959 Regulations.

§242.9 Rancheria or reservation business corporation.

§ 242.9 Rancheria or reservation business corporations.

When a plan for the distribution of the assets of a tribal business corporation has been approved and adopted by a referendum held for the purpose, the Board of Directors, or equivalent, of such Indian business corporation shall cause a final financial statement to be prepared and submitted to the Area Director, including a certificate that all the obligations and debts of said corporation have been liquidated or adjusted and that all the assets of such corporation have been or are simultaneously therewith conveyed to persons or corporations authorized by law to receive them. The charter of the group shall upon receipt of a satisfactory certificate of completion be revoked by the Secretary.

There are no provisions in the 1959 regulations which correspond to §242.11 of the 1965 regulations.

1965 Regulations

There are no corresponding provisions in the 1965 regulations. §242.9 of the 1959 regulations evidently applies to the revocation of the charters of IRA tribes, and to the winding up of their affairs.

§242.11 Sale of unoccupied lands.

§ 242.11 Sale of unoccupied land.

Sale of any rancheria or reservation by the Secretary pursuant to the authority contained in section 5(d) of the Act of August 18, 1958, as amended, shall be conducted as nearly as practicable in the manner prescribed in that portion of Part 121 of this title which applies to the sale of individually owned trust or restricted land.

[NOTE: Subdivision (d) to §5 of the Rancheria Act was added by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390-391].

1959 Regulations

§242.10 Proclamation.

§ 242.10 Proclamation.

When the provisions of a plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a proclamation declaring that the special relationship of the United States to the reservation or reservation unit to the distributees and the dependent members of their immediate families is terminated. The proclamation shall list the names of the distributees and dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians.

[F.R. Doc. 59-4738; Filed, June 4, 1959; 8:48 a.m.]

[There are no provisions in the 1959 regulations which correspond to §242.13 of the 1965 regulations]

1965 Regulations

§242.12. Notice of termination.

When the provisions of a plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a notice declaring that the special relationship of the United States to the reservation or reservation unit and to the distributees and the dependent members of their immediate families is terminated. The notice shall list the names of the distributees and the dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians, the fact that all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated, the fact that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and that State laws shall apply to them in the same manner as they apply to other citizens.

§242.13 Special instructions.

§ 242.13 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the purpose of the regulations in this Part 242 and within any authority delegated to him.